D. Checklist Item 4—Unbundled Local Loops

1. Background

268. Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that Bell Atlantic provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[873] The Commission has defined the loop as "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises."[874] This definition includes different types of loops, including "two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals."[875]

269. In order to establish that it is "providing" unbundled local loops in compliance with section 271(c)(2)(B)(iv), Bell Atlantic must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors reasonably demand and at an acceptable level of quality.[876] Bell Atlantic must also demonstrate that it provides nondiscriminatory access to unbundled loops.[877] In previous section 271 orders, the Commission has generally indicated that the ordering and provisioning of network elements has no retail analogue, and we therefore look to whether the BOC's performance offers an efficient competitor a meaningful opportunity to compete.[878]

270. As the Commission stated in the *Second BellSouth Louisiana Order*, one way that a BOC can demonstrate compliance with checklist item 4 is to submit performance data evidencing the time interval for providing unbundled loops and whether due dates are met.[879] As described in the discussion of checklist item 2, competing carriers must also have nondiscriminatory access to the various functions of Bell Atlantic's OSS in order to obtain unbundled loops in a timely and efficient manner.[880] Thus, we look to performance data measuring whether competing carriers are informed of the status of their order and how responsive the BOC is in providing access to necessary support functions, including maintenance and repair.

271. Bell Atlantic must also provide access to any functionality of the loop requested

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873 47 U.S.C. § 271(c)(2)(B)(iv).

874 *Local Competition First Report and Order*, 11 FCC Rcd at 15691.

875 *Id.*

876 *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637.

877 *Id.* at 20712-13.

878 *Ameritech Michigan Order*, 12 FCC Rcd at 10619.

879 *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20713.

880 *Id.*; *Ameritech Michigan Order*, 12 FCC Rcd at 20614.

by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.[881] In order to provide the requested loop functionality, such as the ability to deliver ISDN or xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities, with the competing carrier bearing the cost of such conditioning. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses integrated digital loop carrier (IDLC) technology[882] or similar remote concentration devices for the particular loop sought by the competitor. Again, the costs associated with providing access to such facilities may be recovered from competing carriers.[883]

272. As part of allowing a competitor to combine its own facilities with an incumbent LEC's loops, a BOC must provide cross-connect facilities between an unbundled loop and a competing carrier's collocated equipment at prices consistent with section 252(d)(1) and on terms and conditions that are reasonable and nondiscriminatory under section 251(c)(3).[884] Incumbent LECs must also provide access to unbundled network interface devices so that requesting carriers can connect their own loop facilities at that point.[885]

2. Discussion

273. We conclude that Bell Atlantic demonstrates that it provides unbundled local loops in accordance with the requirements of section 271. As detailed below, Bell Atlantic demonstrates that it has a concrete and specific legal obligation to provide unbundled local loops to competing carriers in accordance with these requirements. In addition, Bell Atlantic provides sufficient evidence that it provides unbundled local loop transmission, for the provision of both traditional voice services and various advanced services, in a nondiscriminatory manner.

274. In reaching these conclusions, we acknowledge that we differ from the evaluation of the Department of Justice in certain material respects. Although we have accorded substantial weight to the Department's views as required by section 271, the statute prohibits us from giving the Department's views preclusive weight.[886] With respect to Bell Atlantic's provision of unbundled loops, we reach conclusions that vary from those of the Department in instances where we assess the totality of the evidence differently or where we take an analytical approach distinct from that taken by the Department.

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[881] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20713; *Local Competition First Report and Order*, 11 FCC Rcd at 15691.

[882] IDLC technology permits a carrier to aggregate and multiplex loop traffic at a remote concentration point and to deliver that multiplexed traffic directly into the switch without first demultiplexing the individual loops. *Local Competition First Report and Order*, 11 FCC Rcd at 15692.

[883] *Local Competition First Report and Order*, 11 FCC Rcd at 15692-93.

[884] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20713.

[885] *Id.* at 15693. The network interface device is a cross-connect device used to connect the loop facilities to inside wiring. *See id.*

[886] *See supra* Section II.A.

275. Bell Atlantic makes local loop transmission available on an unbundled basis in compliance with the 1996 Act through its NYPSC No. 916 Tariff and through various interconnection agreements.[887] Specifically, Bell Atlantic provisions a full range of unbundled loops, including analog and digital 2-wire and 4-wire loops, that competing carriers can use to offer a full range of services such as ISDN, ADSL, HDSL, 1.544 Mbps digital (DS1) transmission, and 45 Mbps digital (DS3) transmission.[888] Bell Atlantic provides access to stand-alone loops through cross-connects that run from the Bell Atlantic distribution frame to competing carriers' collocation space.[889]

276. Bell Atlantic provisions these unbundled local loops to competing carriers in three distinct forms. First, when Bell Atlantic does not presently serve the customer on the lines in question, a competing carrier may obtain a "new" loop from Bell Atlantic. In this case, the customer would be provided service on the second line from a competitive carrier and not from Bell Atlantic, while retaining Bell Atlantic as the provider on the original line. Second, Bell Atlantic also provisions stand-alone loops to competing carriers through coordinated conversions of active loops to the carriers' collocation space. These coordinated loop cutovers, or "hot cuts," make it possible to transfer an active Bell Atlantic customer's service to a competing carrier. For both new loops and conversions of existing customers, when loops are provisioned on a stand-alone basis, the competing carrier obtains only the transmission facility between Bell Atlantic's central office and the customer's premises. Third, Bell Atlantic provisions loops as part of a platform of network elements. When Bell Atlantic provisions a loop as part of a platform, the competitor receives the local loop, shared transport, and switching capability.[890]

277. Through September 1999, Bell Atlantic has provisioned to competing carriers 200,000 loops, including approximately 50,000 stand-alone loops and 150,000 loops provided as part of platforms of network elements.[891] Nearly 150,000 of these loops, including approximately 15,000 stand-alone loops and 130,000 platform loops, were delivered to competing carriers during the period from May through September, 1999.[892] Bell Atlantic represents that it can easily meet the current commercial demand for unbundled local loops and that it will, as needed, add personnel and resources to meet any further increases in commercial demand.[893] Additionally, through September 1999, Bell Atlantic has provisioned to competing carriers more than 3,300 premium digital loops,[894] which may be appropriate for the provision of advanced

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887 *See* Bell Atlantic Lacouture/Troy Decl. at para. 64.

888 *Id.*

889 *Id.*

890 *See id.* at para. 66.

891 *See id.* at para. 66; Bell Atlantic Lacouture/Troy Reply Decl. at para. 34.

892 Bell Atlantic Lacouture/Troy Decl. at para. 66; Bell Atlantic Lacouture/Troy Repy Decl. at para. 34.

893 Bell Atlantic Lacouture/Troy Decl. at para. 67.

894 *Id.* at para. 78; Bell Atlantic Lacouture/Troy Reply Decl. at para. 73.

services, and approximately 1,100 xDSL-specific loops,[895] which are specifically designed for the provision of advanced services.

278. To demonstrate that it provides unbundled loops in compliance with its checklist obligations, Bell Atlantic submitted performance data for various metrics relating to loop provisioning, including data on the length of provisioning intervals, missed appointment rates, "on-time" hot cut performance, and new loop and hot cut installation troubles. In addition, Bell Atlantic submitted performance data addressing both voice-grade loops and loops capable of transmitting the digital signals necessary to support high-speed data services. In view of the variety of these measures, we conclude that our analysis of this checklist item cannot focus on Bell Atlantic's performance with respect to any single metric or any single type of loop. Rather, we examine the performance data for all of the various loop metrics, as well as the factors surrounding those metrics, in order to obtain a comprehensive picture of whether Bell Atlantic is providing unbundled local loops in accordance with the requirements of checklist item 4.

279. As noted above, in the past we have evaluated whether a BOC is meeting its nondiscrimination obligation with respect to loops by examining whether loops are provided in a fashion that provides an efficient competitor a meaningful opportunity to compete.[896] In this application, however, we note that the New York Commission adopted a retail analogue for new unbundled loops, and Bell Atlantic submitted accompanying data with which we can conduct a direct parity comparison.[897] Because this retail analogue was developed as a result of the rigorous collaborative process described above, we find this means of comparison to be reasonable in this instance. We therefore conclude that Bell Atlantic must satisfy its duty of nondiscrimination by demonstrating that it provisions new unbundled local loops to competing carriers in substantially the same time and manner as it does to its retail customers.[898] Because the New York Commission did not identify a retail analogue to the coordinated cutover of an active loop, *i.e.*, a "hot cut," however, we will examine Bell Atlantic's provision of hot cuts in terms of whether its performance affords competitors a meaningful opportunity to compete.[899] We also discuss separately Bell Atlantic's evidence regarding its performance with respect to xDSL loops, describing how we will consider such evidence in evaluating future applications filed under section 271.

a. Provisioning of Unbundled Local Loops

280. We conclude that Bell Atlantic presented sufficient evidence to demonstrate that it

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[895] Bell Atlantic Lacouture/Troy Decl. at para. 81 & Attach. K; Bell Atlantic Lacouture/Troy Reply Decl. at para 73.

[896] *Ameritech Michigan Order*, 12 FCC Rcd at 20619.

[897] In particular, Bell Atlantic provides data regarding its performance in provisioning second lines and other new loops to its retail customers to its retail customers.

[898] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20655; *Local Competition First Report and Order*, 11 FCC Rcd at 15763-64.

[899] *Ameritech Michigan Order*, 12 FCC Rcd at 20619.

provisions loops in the quantities that competitors reasonably demand, at an acceptable level of quality, and within a reasonable timeframe. With respect to unbundled loops provisioned both on a stand-alone basis and as part of a network platform, we find that Bell Atlantic demonstrates that it provides new unbundled local loops to competing carriers in substantially the same time and manner as it provides new loops to its retail customers.

281. *Stand-Alone Loops.* We find that Bell Atlantic demonstrates that it provides new stand-alone loops to competing carriers in a nondiscriminatory manner. Specifically, as discussed below, we conclude that Bell Atlantic's processes for offering and meeting confirmed appointment dates for installing new loops to competing carriers are substantially the same as the processes for offering and meeting Bell Atlantic retail appointments. Additionally, we find that the new, stand-alone loops Bell Atlantic provisions to competing carriers are of the same quality as the loops it provides to its retail customers.

282. First, we conclude that Bell Atlantic's systems afford competing carriers access to appointment dates that is equivalent to the access provided to Bell Atlantic representatives serving retail customers. Orders for new loops are referred to as "dispatch" orders because they require that a technician be dispatched to the customer's premises in order to complete the installation.[900] With respect to these orders, competing carriers have access to the same "SMARTS" clock, which sets available dispatch loop appointments through an automated system, as do Bell Atlantic retail representatives.[901] Accordingly, competing carriers and Bell Atlantic customer representatives have equivalent access to loop installation appointments.

283. We similarly conclude that Bell Atlantic's process for meeting confirmed appointment dates is nondiscriminatory. Specifically, we find that Bell Atlantic meets the confirmed due dates of the customers of competitive carriers in the same time and manner as it meets the confirmed due dates of its retail customers. Performance data indicate that Bell Atlantic is completing loop installations within the interval requested by competitors.[902] Indeed, the Carrier-to-Carrier performance measures evidence consistently lower missed appointment rates for the customers of competing carriers than for Bell Atlantic customers. In June 1999, Bell Atlantic missed approximately 2 percent of new loop installation appointments for competing carriers and 9 percent of appointments for Bell Atlantic retail customers.[903] In addition, for the period from July through September 1999, Bell Atlantic missed less than one percent of installation appointments for new loops provisioned to competing carriers.[904] By contrast, during

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[900] Bell Atlantic Dowell/Canny Decl. at para. 59.

[901] *Id.* at para. 63; *see supra* Section V.B.1.g.

[902] Bell Atlantic Lacouture/Troy Decl. at para. 76.

[903] In June, Bell Atlantic missed 1.96 percent of installation appointments for competing carriers and 9.02 percent of appointments for Bell Atlantic customers. Bell Atlantic Dowell/Canny Decl. Attach. D at 90 (metric PR-4-04 – Loop New for June 1999).

[904] In July, Bell Atlantic missed .33 percent of dispatched new loop installations for competing carriers and in August, .12 percent. Bell Atlantic Dowell/Canny Decl. Attach., D at 92, 104 (metric PR-4-04 – Loop New for July and August 1999). Similarly, Bell Atlantic missed .41 percent of loop installation appointments for competing

the same period, Bell Atlantic missed between 10 and 15 percent of new loop installation appointments for its retail customers.[905] As these performance data demonstrate, Bell Atlantic provisions new loops to competing carriers on a more reliable basis than it does for its own customers. We find that this level of performance demonstrates that Bell Atlantic is provisioning new loops to competitors on a timely basis in accordance with the requirements of checklist item 4.

284. In addition, we conclude that Bell Atlantic is provisioning unbundled loops, both on a stand-alone basis and as part of a platform of network elements, to competing carriers at an acceptable level of quality.[906] Bell Atlantic's performance data indicate that from June through September 1999, less than 2 percent of the new loops provisioned to competing carriers were the subject of a trouble report within 7 days of installation, whereas approximately 3 percent of Bell Atlantic retail customers reported loop troubles within the same period.[907] Similarly, from June through September, competing carriers reported far less loop troubles within 30 days of installation than did Bell Atlantic retail customers.[908] We find this to be substantial evidence that Bell Atlantic is provisioning new loops to competing carriers that are equivalent in quality to

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carriers in September. Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 9 (metric PR-4-04 – Loop New for September 1999).

[905] Bell Atlantic missed 10.69 percent of retail loop installation appointments in July and 9.41 percent of appointments in August. Bell Atlantic Dowell/Canny Decl. Attach. D at 92, 104 (metric PR-4-04 – Loop New for July and August 1999). Finally, Bell Atlantic missed 12.14 percent of retail loop installation appointments in September. Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 9 (metric PR-4-04 – Loop New for September 1999).

[906] Installation quality performance data measure both new, stand-alone loops and loops provisioned as part of a platform. Accordingly, the only types of loops provisioned by Bell Atlantic that are not included in these reports are those provisioned as hot cuts. *See* Bell Atlantic Dowell/Canny Reply Decl. Attach. B at 47.

[907] In June, competing carriers reported troubles within 7 days for 1.28 percent of the loops installed by Bell Atlantic, and retail customers reported troubles with 2.85 percent of installed loops. Bell Atlantic Dowell/Canny Decl. Attach. D at 80 (metric PR-6-02 – Loop for June 1999). July data indicate that 1.65 percent of loops installed for competing carriers received trouble reports, and 2.90 percent of Bell Atlantic retail loops had reported troubles. *Id.* at 92 (metric PR-6-02 – Loop for July 1999). In August, competing carriers reported troubles within 7 days for 1.57 percent of the loops installed by Bell Atlantic, and retail customers reported troubles with 2.92 percent of installed loops. *Id.* at 104 (metric PR-6-02 – Loop for August 1999). In September, 1.06 percent of loops provisioned to competitors had troubles reported within 7 days of installation, while 3.15 percent of Bell Atlantic retail customers reported loop troubles within 7 days. Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 9 (metric PR-6-02 – Loop for September 1999).

[908] In June, competing carriers reported troubles within 30 days for 3.31 percent of the loops installed by Bell Atlantic, and retail customers reported troubles with 4.85 percent of installed loops. Bell Atlantic Dowell/Canny Decl. Attach. D at 80 (metric PR-6-01 – Loop for June 1999). July data indicate that 4.05 percent of loops installed for competing carriers received trouble reports within 30 days and 5.22 percent of Bell Atlantic retail loops had reported troubles. *Id.* at 92 (metric PR-6-01 – Loop for July 1999). In August, competing carriers reported troubles within 30 days for 3.50 percent of the loops installed by Bell Atlantic, and retail customers reported troubles with 5.02 percent of installed loops. *Id.* at 104 (metric PR-6-01 – Loop for August 1999). In September, 2.65 percent of loops provisioned to competitors had troubles reported within 30 days of installation, while 5.74 percent of Bell Atlantic retail customers reported loop troubles within 30 days. Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 9 (metric PR-6-01 – Loop for September 1999).

those it provisions to its retail customers. Furthermore, the record lacks evidence of conflicting data, nor do competing carriers raise serious disputes regarding the quality of the new voice-grade loops provisioned by Bell Atlantic.[909]

285. In concluding that Bell Atlantic provides nondiscriminatory access to new unbundled loops, we note that, although data related to average installation intervals remain important in our framework for evaluating section 271 applications, in this instance Bell Atlantic provided information that convinces us that other factors more accurately reflect its compliance with this checklist item. Accordingly, under these facts, we accord little weight to data evidencing the average intervals in which loop installations are completed.[910] The record contains performance data evidencing that, on average, competing carriers experience longer average loop installation intervals than do Bell Atlantic retail customers.[911] These differences are statistically significant under the framework adopted by the New York Commission. As detailed below, however, we conclude that Bell Atlantic presented sufficient evidence to demonstrate that the disparity between wholesale and retail average installation intervals is not the result of discriminatory conduct, but rather is the result of factors outside of its control.

286. First, we find that Bell Atlantic demonstrates that competitive carriers frequently request later due dates than those offered by Bell Atlantic's automatic appointment clock. If competing carriers request later due dates for loop installations more often than Bell Atlantic customers, then installation intervals for those competing carriers will be, on average, longer than those for Bell Atlantic customers. Although Bell Atlantic relies upon competing carriers to

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[909] We note that Prism alleges that Bell Atlantic often fails to provision functioning unbundled loops. Prism Comments at 9-11. Although we have considered these claims, Prism has not asserted that any installation problems it has experienced are not reflected or captured in the relevant performance measures. Moreover, we find Prism's general allegations to be insufficient to overcome the substantial evidence in the record of the quality of new, unbundled loops provisioned by Bell Atlantic.

As discussed in our analysis of checklist item 2, we also rely heavily upon KPMG's comprehensive evaluation of Bell Atlantic's provisioning systems for both wholesale and resale services. KPMG examined the degree to which Bell Atlantic's provisioning environment for wholesale orders is "on parity" with provisioning for Bell Atlantic retail customers and concluded that Bell Atlantic had satisfied each of its testing criteria. *See generally* KPMG Final Report at POP11 IV-258-84 (Provisioning Parity Process Evaluation). *See also supra* Section V.B.1.g.

[910] Bell Atlantic's data measure the "average completed interval," which is the average number of business days between the order application date and the work completion date. Bell Atlantic Dowell/Canny Decl. Attach. B at 35. For purposes of this discussion, we use the terms "average completed interval" and "average installation interval" interchangeably.

[911] With respect to customers of competing carriers, the average competed interval in June 1999 for loops with one to five lines was 6.55 days, while the average completion interval for Bell Atlantic retail customers was 3.27 days. Bell Atlantic Dowell/Canny Decl. Attach. D at 80 (metric PR-2-03 – Loop for June 1999). In July 1999, the average installation interval for loop orders of one to five lines was 5.39 days for competing carriers and 3.08 days for Bell Atlantic customers. *Id.* at 92 (metric PR-2-03 – Loop for July 1999). In September 1999, the average installation interval for customers of competing carriers for loop orders of one to five lines was 5.88 days, and the Bell Atlantic retail average interval was 3.52 days. Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 9 (metric PR-2-03 – Loop for September 1999). The data further reveal similar trends for loop orders involving more than five lines, although the number of such loops ordered by competitors has consistently been very small. *See id.* (metric PR-2-04 and 2-05 – Loop for June, July, August, and September 1999).

specifically "code" orders that include requests for longer-than-average provisioning intervals so they can be excluded from the installation interval measures,[912] a statistical study submitted by Bell Atlantic establishes that competing carriers "miscode" a significant percentage of non-dispatch orders, causing those requests to be erroneously included in the performance data.[913] Although the statistical analysis does not address dispatched orders, such as orders for new unbundled loops, we agree with Bell Atlantic that it is likely that competing carriers similarly miscode dispatched orders for which an appointment date after the first available date is sought,[914] which would result in longer requested and actual provisioning intervals. Indeed, AT&T states that it typically requests 5 days for non-dispatch orders with standard intervals of 2 days,[915] and we find it likely that it similarly requests longer intervals for dispatch orders. Additionally, with the exception of AT&T, commenters have not taken serious issue with Bell Atlantic's provisioning of new, stand-alone unbundled loops.[916]

287. We are also persuaded by Bell Atlantic's argument that competing carriers experience longer completion intervals than its retail customers because the automatic appointment clock used to schedule available appointments contains longer average appointment intervals in some geographic areas than in others. As a result, reported average installation intervals will vary depending upon where competitive carriers are ordering service.[917] Average completion intervals for unbundled loops provisioned to competing carriers would be longer if a high proportion of those competing carriers provide service to geographic areas with busy service centers. This factor, however, is not accounted for in the performance data measuring average loop installation intervals.[918] No commenter disputes that this factor affects average completion

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[912] Bell Atlantic Dowell/Canny Decl. Attach. B at 39.

[913] *See* Bell Atlantic Application at 17; Bell Atlantic Bamberger/Gertner Decl.

[914] *See* Bell Atlantic Bamberger/Gertner Decl. at para. 12.

[915] AT&T Pfau/Kalb Aff. at para. 143. We note, however, that AT&T states that it does so because it lacks confidence in Bell Atlantic's ability to complete orders on-time. *Id.*

[916] We note that Prism alleges a low rate of successful loop installations performed by Bell Atlantic, although it does not dispute directly Bell Atlantic's data. *See* Prism Comments at 10-11. Although we take seriously Prism's claims, we nonetheless find them to be insufficient to overcome the record evidence that Bell Atlantic provisions quality unbundled loops in a nondiscriminatory manner. In addition, although it mentions the disparity between Bell Atlantic's loop provisioning intervals, the Department of Justice does not address the provisioning of new unbundled loops in its evaluation. *See* Department of Justice Evaluation at 19 n.42.

[917] Bell Atlantic Dowell/Canny Reply Decl. at para. 53.

[918] Bell Atlantic also contends that, generally, average provisioning intervals are longer for competing carriers because those carriers order proportionately more products with longer standard provisioning intervals than Bell Atlantic customers. Bell Atlantic Bamberger/Gertner Decl. at para. 12. We note first that Bell Atlantic makes no specific reference to this claim with respect to loop orders, and we are therefore unable to determine if such a claim would be applicable to those orders. We are unpersuaded, however, that this "order mix" argument is applicable to stand-alone new loop orders because the feature mixes that Bell Atlantic alleges result in longer provisioning intervals do not come into play when Bell Atlantic provisions a stand-alone loop. A competing carrier, for instance, would not order any feature such as Caller ID or Call Answering from Bell Atlantic when it provides service over an unbundled loop that is cross-connected to its own switch, as is the case with a stand-alone loop, for such features

intervals, and we are persuaded by Bell Atlantic's arguments that it does.

288. In view of these factors, which are outside of Bell Atlantic's control and which can cause distortion to the average installation intervals, we find unpersuasive the claims of competing carriers that the average completion intervals on their face demonstrate that Bell Atlantic provisions new loops in a discriminatory manner, citing the Commission's previous statements that average installation intervals are a "critical measure of parity."[919] Although we continue to believe that average installation intervals are important in determining whether loops are being provided in a nondiscriminatory manner, we look to other available data as well.[920] Where, as here, the BOC makes a reasonable showing that the evidence on average installation intervals is distorted by other factors, it is reasonable to accord more weight to this other evidence and less weight to average installation intervals. Here, we find the missed rate of installation appointments to be the most accurate indicator of Bell Atlantic's ability to provision unbundled loops. In this regard, as discussed above, Bell Atlantic's performance in meeting loop installation appointments demonstrates that it is providing new loops to competing carriers within the intervals they are requesting. Accordingly, we conclude that Bell Atlantic demonstrates that it is providing new, stand-alone loops to competing carriers in a timely manner.

289. We similarly conclude that the same analysis is applicable to Bell Atlantic's provisioning of high capacity loops. As with standard, voice-grade loops, the average completion interval for the installation of DS1 loops ordered by competing carriers is longer than the completion interval experienced by Bell Atlantic retail customers.[921] Bell Atlantic demonstrates, however, that it misses fewer appointments for installations of high capacity loops to competing carriers than it does for its retail customers.[922] Further, although commenters allege

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are provided through the competitive carrier's switch and not the loop. *See* Bell Atlantic Dowell/Canny Decl. at para. 64; *Local Competition First Report and Order*, 11 FCC Rcd at 15706.

[919] AT&T Comments, Exhibit K, para. 134. *See* Prism Comments at 7-10.

[920] In the *Ameritech Michigan Order*, for example, the Commission stated that the BOC "is free to use data on due dates not met to explain any inconsistencies between the average installation intervals for itself and other carriers. For example, if a particular competing carrier consistently requests a standard, longer interval for completion of all of its orders, rather than the first available installation date, such data may explain that any differences in the average installation intervals between [the BOC] and the other carrier are not due to discriminatory conduct on the part of [the BOC]." *Ameritech Michigan Order*, 12 FCC Rcd at 20633.

[921] The average completed interval for competing carriers in July was 15.00 days, and the interval for Bell Atlantic customers was 11.34 days. *See* Bell Atlantic Dowell/Canny Decl. Attach. D at 93 (metric PR-2-07 – DS1 for July 1999). For August, DS1 loops were provisioned to competing carriers in, on average, 24.13 days and to Bell Atlantic customers in 8.07 days. Id. at 105 (metric PR-2-07 – DS1 for August 1999).

[922] In June, Bell Atlantic missed 2.94 percent of installation appointments for high capacity services delivered to competing carriers and 3.71 percent of appointments for its retail customers. Bell Atlantic Dowell/Canny Decl. Attach. D at 81 (metric PR-4-01 – Total for June 1999). In July, Bell Atlantic missed 22.22 percent of installation appointments for high capacity loops delivered to competing carriers and 5.44 percent of appointments for its retail customers. *Id.* at 93 (metric PR-4-01 – Total for July 1999). In August, however, Bell Atlantic's performance towards competitors improved substantially, and it missed 15.79 percent of appointments for competing carriers and 18.03 percent of installations for its own customers. *Id.* at 105 (metric PR-4-01 – Total for August 1999). In

that Bell Atlantic is unable to provision high capacity loops such as DS1s in a timely manner,[923] none of these claims is documented with specific evidence or contained in a sworn affidavit.[924] Accordingly, we conclude that Bell Atlantic is meeting its installation due dates for high capacity loops provided to competitors on a more reliable basis than it does for loops provided to its own customers and therefore establishes that it provisions these loops in accordance with its checklist obligations.

290. *Loops Provisioned as Part of a Platform.* We similarly find, based on the evidence in the record, that Bell Atlantic demonstrates that it is providing unbundled loops in combination with other network elements in a nondiscriminatory manner. As detailed above in our discussion of checklist item 2, Bell Atlantic establishes that it provisions platforms of network elements, including unbundled loops, within the intervals in which they are requested and that it misses fewer competing carriers' due dates for platforms of network elements than it does for its retail customers. Further, as discussed above, Bell Atlantic demonstrates that it provisions unbundled loops as part of platforms of network elements that are of substantially the same quality as the loops provisioned to its own customers. We therefore conclude that Bell Atlantic demonstrates that it is provisioning unbundled loops as part of platforms in a nondiscriminatory manner.

b. Hot Cuts

291. We further conclude that Bell Atlantic demonstrates that it is provisioning unbundled loops through the use of coordinated conversions of active customers from Bell Atlantic to competing carriers, a process known as "hot cuts,"[925] in accordance with the requirements of checklist item 4. Because there is no retail equivalent to a hot cut, Bell Atlantic must demonstrate that it provides unbundled loops through hot cuts "in a manner that offers an efficient competitor a meaningful opportunity to compete."[926] As detailed below, we conclude that Bell Atlantic demonstrates that it provisions hot cuts in sufficient quantities, at an acceptable

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September, Bell Atlantic missed only 4 percent of installation appointments for high capacity loops provided to competing carriers and 18.58 percent of appointments for installations to its retail customers. Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 10 (metric PR-4-01 – Total for September 1999).

[923] Allegiance indicates that 46 percent of the DS1 loops it ordered from Bell Atlantic were delivered after the confirmed due date. Allegiance Comments at 12. *See also* Omnipoint Comments at 10; Focal Comments at 5-6.

[924] *See Ameritech Michigan Order*, 12 FCC Rcd at 20569 ("[W]e will attach greater weight to comments and pleadings supported by a sworn statement than we will to an unsupported contrary pleading.").

[925] A hot cut entails manually disconnecting the customer's loop in the Bell Atlantic central office and reconnecting the loop at the competing carrier's collocation space. It also involves coordinated switch software changes at both Bell Atlantic's switch and the competing carrier's switch and the implementation of local number portability. The customer is taken out of service while the hot cut is in progress, thereby making the cut "hot," although if the cut is successful, the service disruption will last no more than five minutes. Bell Atlantic Lacouture/Troy Decl. at para. 69. Ensuring that a hot cut is provisioned correctly with coordination between Bell Atlantic and the competing carrier is therefore critical because problems with the cutover could result in an extended service disruption for the customer.

[926] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20714.

level of quality, and with a minimum of service disruption, thereby offering competitors a meaningful opportunity to compete in the local exchange market.

292. *On-Time Hot Cut Performance.* Under the performance standards developed by the New York Commission, with input from Bell Atlantic and several competitive carriers, hot cut performance is measured according to the percent of coordinated conversions completed within a specified time window.[927] The window, which establishes the time within which the entire hot cut must be completed, is a fixed period of time ranging from one hour to eight hours, depending upon the number of lines involved.[928] For orders with fewer than ten lines, Bell Atlantic has one hour in which to complete the coordinated cutover and report the completion of the hot cut to the competing carrier.[929] Because there is no retail analogue for a hot cut, the New York Commission adopted a benchmark performance metric to measure Bell Atlantic's on-time hot cut performance. In order to meet the New York Commission's adopted standard, Bell Atlantic must provision 95 percent of hot cuts within the window applicable to the particular order.[930] The New York Commission also established a secondary on-time hot cut target of 90 percent for inclusion in the Performance Assurance Plan.[931]

293. In its application, Bell Atlantic asserts that it completed 94 percent of hot cuts on-time in August and July 1999.[932] The record also indicates that Bell Atlantic reported 94 percent on-time hot cut performance for September 1999.[933] These figures, which are self-reported by Bell Atlantic, have been vigorously disputed by several competing carriers in the New York section 271 proceeding. In particular, AT&T submitted affidavits and its own performance data that challenged Bell Atlantic's on-time hot cut performance and raised serious concerns regarding the actual marketplace provisioning of hot cut loops.[934] AT&T also argued that many of the hot cuts provisioned by Bell Atlantic resulted in non-functioning loops and extended service disruptions for its customers.[935]

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[927] Bell Atlantic Dowell/Canny Decl. at para. 73.

[928] *Id.*

[929] Bell Atlantic Application, App. C, *Order Establishing Final Rule*, C2C Record, Tab 83.

[930] New York Commission Comments at 82.

[931] *Id.*

[932] Bell Atlantic Dowell/Canny Decl. Attach. D at 80, 92, 103 (metric PR-4-06 – Hot Cut for July and August 1999).

[933] Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 9 (metric PR-4-06 – Hot Cut for September 1999).

[934] *See* New York Commission Comments at 83; Bell Atlantic Application, App. C, Vol. 61, Tab 941. In the face of these and other challenges to its data, Bell Atlantic was forced to withdraw all of the hot cut data it had submitted prior to June 18, 1999. *See* Bell Atlantic Application, App. C, Vol. 51, Tab 789 (Letter from Randal Milch, Associate General Counsel, Bell Atlantic-State Regulatory North, to Andrew Klein, Assistant Counsel, New York Public Service Commission, June 18, 1999).

[935] New York Commission Comments at 85.

294. In response to these challenges to Bell Atlantic's data, the New York Commission conducted a reconciliation of the conflicting data. New York Commission staff reviewed all AT&T hot cut orders for both July and August.[936] With respect to July, for which Bell Atlantic had reported 94 percent on-time performance, AT&T submitted data indicating that Bell Atlantic completed only 76 percent of its ordered hot cuts within the established window.[937] After reviewing the disputed data and its supporting documentation, New York Commission staff concluded that Bell Atlantic had completed 88 percent of AT&T's orders on-time in July and 90.55 percent of AT&T's orders on-time in August.[938] The staff then adjusted Bell Atlantic's self-reported performance to reflect the revised AT&T-specific data. The staff thus factored into the 94 percent July and August figures those AT&T orders that Bell Atlantic had reported as "on-time," but that staff determined through the reconciliation to have been provisioned outside the established window.[939] This process resulted in the New York Commission staff's conclusion that Bell Atlantic's on-time hot cut performance for all competing carriers was 90.79 percent for July and 91.54 percent for August.[940]

295. We find the most reliable evidence of Bell Atlantic's on-time hot cut performance for July and August 1999 to be the figures that resulted from the New York Commission staff's reconciliation of coordinated loop cutovers provisioned to AT&T. The staff did not conduct a review of non-AT&T orders during this period, however, and we therefore recognize that the staff's calculations of overall hot cut performance could, in fact, include missed or late hot cuts that were reported inaccurately as being on-time.[941] Indeed, the Department of Justice notes that the New York Commission's estimate that 90.79 percent of all hot cuts in July were provisioned on-time would be accurate only if Bell Atlantic had reported every non-AT&T order correctly.[942] With the exception of AT&T, however, no competing carrier submitted data directly challenging Bell Atlantic's self-reported performance. Rather, the allegations of competing carriers are

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[936] A portion of AT&T's Motion to Strike is directed to the New York Commission's submission with its reply comments of the results of its data reconciliation for August 1999. See AT&T Motion to Strike at 4. Specifically, AT&T argues that our rules prohibit us from relying on the material submitted by the New York Commission because it post-dates this application's comment period. The New York Commission's hot cut reconciliation, however, responds directly to arguments made in the comments filed by AT&T regarding Bell Atlantic's on-time hot cut performance. Additionally, the reconciliation addresses data for the month of August 1999, which is prior to the filing of Bell Atlantic's application. Accordingly, as discussed *supra* Section III, we deny AT&T's Motion to Strike with respect to the New York Commission's August hot cut reconciliation.

[937] *See* New York Commission Rubino Reply Aff. at para. 6. AT&T Meek Aff. at para. 118.

[938] New York Commission Rubino Reply Aff. at paras. 9-11.

[939] *Id.* at para. 10.

[940] New York Commission Rubino Reply Aff. at paras. 9-10. The staff's reconciliation is ongoing, although its conclusions regarding September performance are not yet complete.

[941] Department of Justice Evaluation at 18-19 & n.41. *See* AT&T Comments at 39; AT&T Meek Aff. at paras. 132-35.

[942] Department of Justice Evaluation at 18-19 & n.41. *See* AT&T Comments at 39; AT&T Meek Aff. at paras. 132-35.

conclusory and anecdotal,[943] and none is included in a sworn affidavit.[944] We therefore do not accord them a great deal of probative value[945] and instead are persuaded by and give significant weight to the New York Commission staff's exhaustive review of Bell Atlantic's hot cut performance. While criticizing the New York Commission's conclusion that hot cuts are performed on-time roughly 90 percent of the time, the Department of Justice undertook no analysis to proffer an alternative figure in the record.

296. Although we could arrive at a different conclusion if presented with another set of facts, we find that the record in this proceeding provides a reasonable basis for us to conclude that, at a minimum, Bell Atlantic performed hot cuts within the prescribed time interval at least 88 percent of the time in July and 90 percent of the time in August, and Bell Atlantic's performance may have been closer to 90.79 percent and 91.54 percent in July and August, as the New York Commission found.[946] There is also evidence in the record that Bell Atlantic

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[943] *See* Allegiance Comments at 11 (hot cut process caused hot cut failures attributable to Bell Atlantic to drop from more than 70 percent to 20 percent in recent months); ChoiceOne Comments at 4 (Bell Atlantic failed to provision properly 21 of 43 loop orders).

[944] In addition, Bell Atlantic on reply addresses the specific allegations made by Allegiance and ChoiceOne regarding its hot cut performance. Specifically, Bell Atlantic states that between June 21 and August 31, 1999, it completed 91.3 percent of Allegiance's hot cut orders within the prescribed window and 95.40 percent of ChoiceOne's orders within the prescribed window. Bell Atlantic Lacouture/Troy Reply Decl. at paras. 41, 42.

[945] *See Ameritech Michigan Order*, 12 FCC Rcd at 20569 ("[W]e will attach greater weight to comments and pleadings supported by an affidavit or sworn statement than we will to an unsupported contrary pleading.").

[946] We also find that this level of on-time performance would not be significantly affected if it were to capture hot cuts that are delayed as a result of Bell Atlantic provisioning deficiencies, as commenters argue it should. *See* Department of Justice Evaluation at 19 (citing AT&T Meek Aff. at paras. 127-30). Under the on-time performance standard, a hot cut that is not completed at the initially-scheduled time, but rather is completed in a subsequently-rescheduled time, is considered "on-time," even where a Bell Atlantic provisioning error causes the rescheduling. *See id.* at 19. The Department of Justice determined that this aspect of the metric causes the on-time performance measure to "overstate" Bell Atlantic's hot cut performance. *Id.* at 19. KPMG, however, found that the majority of rescheduled hot cuts are attributable to competing carriers, and Bell Atlantic argues that it causes only 11 percent of delayed or postponed hot cuts. Bell Atlantic Application at 19 & Lacouture/Troy Decl. at para. 73. Commenters allege that the percentage of hot cut delays attributable to Bell Atlantic is much higher. See Allegiance Comments at 11; AT&T Comments at 38. AT&T argues that KPMG acknowledged in the New York proceeding that 40 percent of supplements were attributable to Bell Atlantic. AT&T Meek Aff. at para. 102 (citing New York Technical Conference Transcript at 3936-37). As Bell Atlantic responds, however, this statement predated the final report, which represents KPMG's comprehensive analysis of Bell Atlantic's performance in New York. We therefore rely upon the KPMG final report, which found that approximately 11 percent of postponed orders were attributable to Bell Atlantic, and conclude that the failure of the on-time performance measure to include hot cut delays attributable to Bell Atlantic does not overstate overall performance. *See* KPMG Final Report at POP12 IV-294-95 (Table IV-12.6: POP12, P12-3). We find that the number of hot cut delays not included in the metric and attributable to Bell Atlantic is sufficiently small that it would not effect a change in Bell Atlantic's on-time hot cut performance.

We also note that, although commenters argue that "early" cuts, i.e., those made prior to the Frame Due Time, are not reflected in the On-Time Hot Cut Performance Measure, a review of the Carrier-to-Carrier performance standards indicates that early cuts are, in fact, reported as missed hot cuts. See Bell Atlantic Dowell/Canny Decl. Attach. B at 43. *See also* New York Commission Reply at 27.

performed hot cuts on-time 94 percent of the time in September 1999.[947] Furthermore, Bell Atlantic provided this level of on-time performance each month in the face of increasing volumes.[948] Moreover, in addition to maintaining this level of on-time performance, as detailed below, Bell Atlantic provisioned quality loops through hot cuts with a minimum of service disruption. We underscore, however, that the weight we accord to conflicting pieces of evidence here flows directly from our assessment of the probative value of each of those pieces of evidence. As such, we note that we could arrive at a different weighting if presented with another set of facts and circumstances.

297. The Department of Justice cites the failure to complete approximately 10 percent of hot cuts within the prescribed window as one of four problems that, collectively, evidence the need for Bell Atlantic to improve its hot cut performance.[949] In addition to the level of on-time performance, the Department takes issue with Bell Atlantic's ability to return timely confirmations and rejections of hot cut orders, to return accurate order confirmations, and to ensure that customers' directory listings are not dropped during the provision of a hot cut.[950] The Department of Justice, however, did not conclude that on-time hot cut performance of 90 percent, either alone or in combination with other factors, evidences Bell Atlantic's failure to comply with this checklist item. Although it found that the collective weight of these deficiencies imposes constraints upon competition,[951] the Department did not specify in what manner and to what extent the New York local exchange market is affected adversely by these problems. Nor did the Department provide any indication as to what level of hot cut performance or what types of improvements Bell Atlantic should be required to demonstrate in order to satisfy section 271.

298. As discussed in our analyses of checklist items 2 and 7, we do not consider the factors identified by the Department of Justice, either alone or in combination, to have significant effects upon Bell Atlantic's overall hot cut loop performance. Thus, after careful consideration of the evaluations of the Department of Justice and the New York Commission, as well as the comments of competing carriers, we conclude that Bell Atlantic's demonstrated level of on-time hot cut performance is sufficient to offer efficient competitors a meaningful opportunity to compete. Although we recognize that this performance falls slightly short of the New York Commission's adopted standard, we make the independent judgment that on-time hot cut performance at a level of 90 percent or greater is sufficient to permit carriers to enter and compete in a meaningful way in the New York local exchange market.[952] We conclude based

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[947] Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 9 (metric PR-4-06 – Hot Cut for September 1999).

[948] *See* Bell Atlantic Dowell/Canny Decl. Attach. D at 80, 92, 104; Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 9. Moreover, even reviewing the data in a light most favorable to the opponents of the application indicates that in only one month was performance slightly below 90 percent, namely 88 percent.

[949] Department of Justice Evaluation at 18.

[950] *Id.* at 15-16, 19.

[951] *Id.* at 20.

[952] *See* New York Commission Reply at 28. We note that the Department of Justice recognized that deviation from a New York Commission performance standard should not be dispositive in a determination of checklist compliance. Department of Justice Evaluation at 20.

upon the record before us that Bell Atlantic establishes that it attained this level of performance in August and September 1999. Furthermore, we are confident that the penalties attached to this performance measure in the New York Performance Assurance Plan are sufficient to ensure that Bell Atlantic maintains at least this 90 percent level of on-time performance, while also providing incentives to improve performance above this 90 percent level.[953] We are prepared to take appropriate enforcement action in the event of a deterioration in Bell Atlantic's on-time performance below 90 percent.

299. *Quality of Loops Provisioned Through Hot Cuts.* We further conclude that Bell Atlantic demonstrates that it provisions hot cuts at a level of quality that offers competitors a meaningful opportunity to compete. The ability of a BOC to provision working, trouble-free loops through hot cuts is of critical importance in view of the substantial risk that a defective cut will result in end-user customers experiencing service disruptions that continue for more than a brief period.[954] Upon review of the evidence in the record regarding hot cut installation quality, as well as service outages and disruptions, we conclude that Bell Atlantic provisions hot cuts to competitors in a manner sufficient to meet the requirements of the checklist.

300. Bell Atlantic submitted performance data that evidence extremely low rates of installation troubles reported on the lines provisioned through hot cuts.[955] From July through September 1999, competitors reported installation troubles on less than two percent of the lines provisioned through hot cut loops.[956] This level of performance is well below the two percent standard for hot cut installation troubles that was recently adopted by the New York Commission.[957]

301. We find this evidence to be sufficient to overcome the claims of competing

[953] Under the New York Performance Assurance Plan, the Percent On-Time Performance Measure is considered to be a "Critical Measure," requiring the payment of $787,037 for every month that Bell Atlantic fails to meet the 90 percent on-time performance standard and a smaller portion of that amount if Bell Atlantic's performance is between 90 and 95 percent for more than two consecutive months. Bell Atlantic Dowell/Canny Decl. Attach. C, App. B at 1. In addition, recent amendments to the Plan placed an additional $24 million per year at risk for poor on-time hot cut performance. Bell Atlantic Dowell/Canny Decl. Attach. C, App. H at 2.

[954] *See* CPI Reply at 7. Indeed, KPMG recognized during its test of hot cut provisioning that hot cut failures have the potential to affect customers detrimentally, causing service disruptions ranging from hours to days. KPMG Final Report at POP3, POPIV-60P3-33, Table IV-3.33.

[955] Installation troubles for hot cut loops are reported in terms of the number of lines, not hot cuts, that are the subject of trouble reports. *See* Bell Atlantic Dowell/Canny Decl. Attach. B at 47.

[956] For July 1999, Bell Atlantic reports that it received trouble reports within seven days of installation on .34 percent of the lines provisioned through hot cut loops. Bell Atlantic Dowell/Canny Decl. Attach. D at 92 (metric PR-6-02 – Hot Cut Loop for July 1999). In August, it received 1.26 percent of troubles reported within seven days. Id. at 103 (metric PR-6-02 – Hot Cut Loop for August 1999). September data reveal that .51 percent of lines provisioned by Bell Atlantic through hot cuts received trouble reports within seven days of the cutover. Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 9 (metric PR-6-02 – Hot Cut Loop for September 1999).

[957] Beginning September 1999, the New York Commission adopted a standard of 2 percent for the Percent Hot Cut Installation Troubles Reported within 7 Days Measure. *See* Bell Atlantic Dowell/Canny Reply Decl. Attach. D at 9 (metric PR-6-02 – Hot Cut Loop for September 1999).

carriers that Bell Atlantic's hot cut provisioning results in a level of service disruptions that significantly affects their end-user customers and their ability to obtain and retain customers. Allegiance alleges that Bell Atlantic's hot cut provisioning results in outages for nearly 20 percent of its customers,[958] although this claim is neither documented with specific facts nor contained in a sworn affidavit. AT&T makes the most serious challenge to the quality of Bell Atlantic's hot cut provisioning, asserting that between June 21 and August 31, 1999, Bell Atlantic provisioning errors placed nearly 12 percent of its customers out of service.[959]

302. A comprehensive reconciliation of AT&T's outage data that was conducted by the New York Commission, however, largely refutes AT&T's allegations.[960] The data reviewed by the New York Commission reveal that, in fact, less than 5 percent of the hot cuts that Bell Atlantic provisioned to AT&T between June 21 and August 31, 1999 resulted in end-user service

[958] Allegiance Reply at 3.

[959] AT&T Meek Aff. at para. 86. Specifically, AT&T alleges that Bell Atlantic's failures caused service disruptions to 170 out of 1438 customers. *Id.* AT&T also contends that 61 percent of these service outages endured for more than twenty-four hours. *Id.* at para. 87.

Although the Carrier-to-Carrier performance measures do not address them directly, service disruptions or outages can occur in two situations. First, an early cut occurs when a customer's loop is moved to a competitor's collocation space prior to the Frame Due Time and the switch translations are removed from the Bell Atlantic switch prior to such time. AT&T Meek Aff. at para. 84. In that case, the customer would lose service because the competing carrier is unaware that the customer's line is being cut and does not take the steps necessary to port the customer's telephone number. Id. Such an occurrence would be scored as a "miss" under the Percent On-Time Hot Cut Performance Measure and would also result in an outage. A second type of outage involves a defective cut, in which the customer would lose service because of a failure that occurs during the cutover. Id. at para. 85. In this case, if the cutover occurred during the one hour window, the hot cut would be scored as having been on-time, although the customer suffered a disruption of service.

In this regard, AT&T raises several arguments with respect to the allegedly misleading nature of the "On-Time Hot Cut Performance" metric. *See* AT&T Meek Aff. at paras. 112-17. AT&T argues, for instance, that Bell Atlantic is able to manipulate its reported on-time hot cut performance data because it can score as "on-time" hot cuts that result in outages. AT&T Meek Aff. at para. 112. Although this is the case, such an occurrence would nonetheless be reflected in the "Percent Installation Troubles" metric for hot cuts. AT&T further argues that it is inappropriate to score an outage as a "trouble" and not as a "provisioning problem." *Id.* at para. 114. The "Percent Installation Troubles" measure, however, is a provisioning metric that measures provisioning quality and therefore appropriately captures installation troubles that are not reflected in the on-time measure.

[960] A portion of AT&T's Motion to Strike is directed to the New York Commission's submission with its reply comments of the results of its data reconciliation of AT&T's claims of outages. *See* AT&T Motion to Strike at 4. Specifically, AT&T argues that our rules prohibit us from relying upon the material submitted by the New York Commission because it post-dates this application's comment period. The New York Commission's reconciliation, however, responds directly to arguments made in the comments filed by AT&T regarding outages caused by Bell Atlantic's hot cut provisioning failures. Additionally, the reconciliation addresses data for the period from June 21 through August 1999, which is prior to the filing of Bell Atlantic's application. Accordingly, as discussed supra Section III, we deny AT&T's Motion to Strike with respect to the New York Commission's outage data reconciliation.

outages as a result of a Bell Atlantic provisioning failure.[961] The New York Commission further notes that many of the outages claimed by AT&T were not the result of Bell Atlantic failures and that many others had causes that could not be determined.[962] Although the reconciliation demonstrates that approximately five percent of AT&T customers suffered service outages as a result of Bell Atlantic errors, we consider this to be sufficient for checklist compliance,[963] particularly in view of the extremely low rates of installation troubles reported on the hot cut loops provisioned by Bell Atlantic.

303. Additionally, AT&T's reports of extended outages are called into question by Bell Atlantic's claims that AT&T fails to report installation troubles within a reasonable period of time. The New York Commission concluded that in many cases of service disruptions, "AT&T took longer to identify and report the problem to Bell Atlantic than Bell Atlantic took to fix it."[964] In these circumstances, as the New York Commission notes, it is difficult to determine the cause for the duration of many service outages.[965] Furthermore, performance data indicate that a percentage of Bell Atlantic's own customers suffer service disruptions at any given time.[966] Based upon these factors, as well as the small percentage of AT&T service outages caused by Bell Atlantic and the lack of corroborating evidence of outages, we conclude that AT&T's claims of service disruptions are insufficient to overcome the performance data evidencing extremely low levels of installation troubles associated with the hot cut loops provisioned by Bell Atlantic.

304. *Hot Cut Provisioning Process.* We also dismiss claims by AT&T and other carriers that additional hot cut provisioning deficiencies, which are not reflected in performance

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[961] New York Commission Rubino Reply Aff. at para. 13 & Ex. 5. The New York Commission staff's reconciliation demonstrates that approximately 4.5 percent of AT&T's customers suffered outages between June 21 and August 31, 1999 as a result of a Bell Atlantic provisioning error. Id.

[962] *Id.*, Ex. 5. The New York staff's reconciliation indicates that, of the 167 alleged outages reviewed, 66 were attributable to Bell Atlantic provisioning errors, 75 were not attributable to Bell Atlantic, and 26 had causes that could not be determined. *Id.*

[963] In this regard, we note that the Department of Justice did not raise the issue of service disruptions in its evaluation.

[964] New York Commission Reply at 29-30 (citing NYDPS Staff Analysis of AT&T Reported Service Outages—June 21-August 31, 1999, Ex. 5). The New York staff also observed that, unlike other carriers, AT&T does not perform mechanized loop tests when it accepts a hot cut. Rather, AT&T attempts to call the customer and, in the absence of a completed call, waits until the customer calls AT&T. *Id.*

[965] New York Commission Reply at 29. We also note, although we do not rely upon them as a basis for our decision, that recently-adopted performance measures in New York will monitor the percentage of defective, early, and late hot cuts, as well as the duration of customer service disruptions. *See* NYPSC Additional Guidelines Order at 28-29.

[966] *See e.g.*, Bell Atlantic Dowell/Canny Decl. Attach. D at 94 (metric MR-2-02 – Loop for July 1999). In July, for instance, Bell Atlantic reported loop troubles on 1.56 percent of its network. Id. We also note that in each month from June through September, the network trouble report rate for loops was higher for Bell Atlantic's network than for those of competing carriers. *See* Bell Atlantic Dowell/Canny Decl. Attach. D at 82, 94, 106 (metric MR-2-02 – Loop for June, July, and August 1999); Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 10 (metric MR-2-02 – Loop for September 1999).

data, impose significant costs and delays upon competing carriers and their customers, thereby impairing new entrants' ability to compete. After several parties in the New York proceeding challenged Bell Atlantic's hot cut performance and data, Bell Atlantic, the New York Commission, and several competing carriers collaborated to develop and adopt a standardized hot cut process that details operating methods and procedures to facilitate coordinated cutovers.[967] In addition to identifying the steps to a hot cut, the procedure requires Bell Atlantic technicians to complete a checklist and report when each intermediate step has been completed.[968] Although there are numerous steps in the hot cut process, the New York Commission and commenters identify four particular steps that have proven to be critical to on-time hot cut performance: the return of accurate order confirmations; the due date minus 2 days dial tone check; the due date minus one hour confirmation call from Bell Atlantic to the competing carrier; and the Bell Atlantic post-completion confirmation call.[969]

305. Since the hot cut procedures have been in effect, competing carriers have continued to assert that Bell Atlantic fails to follow the agreed-to hot cut provisioning process.[970] Compliance with the procedure's steps is currently not captured in any performance standard or measure,[971] although competitors contend that Bell Atlantic's failure to comply with the process forces them to supplement and postpone many loop orders and to escalate problems throughout various levels of Bell Atlantic's wholesale organization, imposing costs and delays upon those carriers and their customers.[972] AT&T asserts, for instance, that a high percentage of order confirmations received from Bell Atlantic are inaccurate,[973] and that Bell Atlantic often fails to conduct the due date minus two days dial tone check and the due date minus one hour confirmation call.[974] AT&T further states that it has devoted specific staff functions to escalating hot cut problems with Bell Atlantic and quantifies the resultant additional costs for each order.[975]

306. By contrast, as Bell Atlantic argues, KPMG found that Bell Atlantic technicians

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[967] *See* Bell Atlantic Application at 18; New York Commission Comments at 83. For a description of the entire hot cut provisioning process, see Bell Atlantic Lacouture/Troy Decl. at para. 70.

[968] New York Commission Comments at 84.

[969] *Id.* at 83. See also AT&T Comments at 34; AT&T Meek Aff. at paras. 25-29. The process and tracking checklist were adopted in New York on June 21, 1999. Bell Atlantic Application, App. C, Vol. 61, Tab 941 at 17.

[970] *See* AT&T Comments at 34; ALTS Comments at 29-30; Choice One Comments at 5; Allegiance Comments at 11.

[971] We note, however, that Bell Atlantic has agreed that, upon a grant of interLATA relief, it will include in the on-time hot cut performance measure whether it has completed the due date minus 2 days dial tone check. *See* New York Commission Comments at 88.

[972] *See* AT&T Comments at 34; AT&T Meek Aff. at paras. 49, 51, 90-91; Choice One Comments at 4.

[973] AT&T Comments at 35-36; AT&T Meek Aff. at paras. 35-40, 95-98. As discussed in our analysis of checklist item 2, we find that AT&T's claims of LSRC inaccuracy are largely overstated. *See supra* Section V.B.1.f.(ii).(a).

[974] AT&T Comments at 35; AT&T Meek Aff at paras. 46-52.

[975] AT&T Comments at 37; AT&T Mulligan Aff. at para. 38.

followed the hot cut procedures 97 percent of the time.[976] KPMG had previously taken exception with Bell Atlantic's ability to follow the established hot cut procedures, but, following a June 1999 two-week observation of hot cut provisioning, subsequently concluded that the problems had been resolved.[977] Bell Atlantic indicates that it has undertaken extensive training of central office technicians and supervisors to ensure that the hot cut procedures are followed.[978] As a result, the New York Commission confirms that hot cut checklists are completed by Bell Atlantic technicians for every order.[979]

307. The Department of Justice notes that KPMG's observation of hot cut provisioning did not confirm whether Bell Atlantic performed any of the required steps prior to the due date, such as the due date minus two days dial tone check.[980] Additionally, AT&T argues that Bell Atlantic's consistent failure to adhere to the hot cut procedures is evidenced by a letter from New York Commission staff in October 1999 stating that "[a]pplication of the due date minus 2 days check has not been rigorously adhered to at the operations level and it appears that technicians have been using different practices to effectuate coordination."[981] Bell Atlantic responds that this statement refers to Bell Atlantic's practice of agreeing with competing carriers regarding the manner in which the dial tone check will be completed and is not an indication that Bell Atlantic is not following the hot cut procedures.[982] Considering each of these factors, we conclude that the evidence weighs in favor of finding that Bell Atlantic adheres to the hot cut provisioning process. Bell Atlantic demonstrates, and KPMG and the New York Commission have confirmed, that the hot cut procedures are being followed, and we believe contrary allegations in the record are insufficient to refute this showing. Although we take seriously AT&T's claims regarding additional costs it incurs as a result of Bell Atlantic's hot cut provisioning failures,[983] we nonetheless conclude that the record does not indicate that any alleged failure to comply with the procedures results in adverse hot cut provisioning that denies efficient competitors a meaningful

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[976] Bell Atlantic Application at 19; Bell Atlantic Lacouture/Troy Decl. at para. 73. KPMG Final Report at POP3, IV-60-62 (Test Cross Reference P3-22).

[977] KPMG opened an "Exception" regarding compliance with the hot cut procedures. *See* New York Commission Comments at 89. The Exception was closed following a two week test during which KPMG observed technicians performing the due date hot cut procedures. KPMG Final Report at POP3, IV-60-62 (Test Cross Reference P3-24). *See also* Bell Atlantic Application at 19; Bell Atlantic Lacouture/Troy Decl. at para. 73.

[978] Bell AtlanticLacouture/Troy Reply Decl. at para. 71.

[979] New York Commission Comments at 88.

[980] Department of Justice Evaluation at 18 n.40. The Department also notes that KPMG did not test whether the hot cut resulted in a working loop. *Id.* With regard to this argument, we refer to our previous discussion and finding that Bell Atlantic demonstrates that it provides hot cut loops at an acceptable level of quality and with a minimum of service disruption.

[981] AT&T Meek Aff. Attach. 6 at 3 (Letter from Peter McGowan, Associate Counsel, New York PSC, to Randal Milch, Associate General Counsel, Bell Atlantic, and Bob Mulvee, Associated General Counsel, AT&T, dated October 12, 1999).

[982] Bell Atlantic Lacouture/Troy Reply Decl. at para. 60.

[983] *See* AT&T Mulligan Aff. at para. 38.

opportunity to compete. Rather, Bell Atlantic's high rate of on-time hot cuts bolsters the evidence in the record that it is adhering to the hot cut procedures.[984]

308. Additionally, although we concur with the Department of Justice's conclusion that the economic significance of competition through unbundled loops is greater than would be suggested by assessing the percentage of stand-alone unbundled loops currently being provisioned,[985] we nonetheless conclude that Bell Atlantic demonstrates that it is capable of continuing its performance in provisioning quality hot cuts in a timely manner. In this regard, we further find that Bell Atlantic demonstrates that its ability to provision hot cuts is scalable such that the company can expand its capacity to perform hot cuts in response to increases in commercial demand. KPMG verified that Bell Atlantic's capacity to provision hot cuts is scalable, citing Bell Atlantic's intention to open a second service center for processing hot cut orders.[986] Commenters argue that the hot cut provisioning problems and delays they are currently experiencing demonstrate that Bell Atlantic does not have the capacity to process increased commercial volumes.[987] As discussed herein, however, we find that competing carriers' claims of provisioning deficiencies are insufficient to refute Bell Atlantic's demonstrated hot cut performance. Accordingly, we similarly find those claims to be insufficient to refute Bell Atlantic's showing that it is capable of expanding hot cut volumes to meet growing demand. Additionally, as discussed in our analysis of checklist item 2, we conclude that Bell Atlantic is providing nondiscriminatory access to its OSS ordering functions for unbundled network elements, including unbundled local loops, and is capable of processing large volumes of orders in a timely fashion. Thus, although we have accorded them substantial weight, we do not agree with the concerns raised by the Department of Justice regarding the effects of manual loop order processing upon Bell Atlantic's ability to process increased volumes of loop and hot cut orders.[988]

309. Finally, we emphasize that although we consider Bell Atlantic's demonstrated on-

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[984] We similarly reject AT&T's argument that Bell Atlantic is not able to perform accurate migrations of loops that are served over IDLC facilities. *See* AT&T Meek Aff. at paras. 132-35. Rather, we accord significant weight to KPMG's finding that the methods and procedures adopted by Bell Atlantic permit effective migrations of these loops. After reaching this conclusion, KPMG closed the exception regarding Bell Atlantic's performance in providing cutovers of ILDC loops. *See* KPMG Exception No. 44. *See also* KPMG Final Report at POP3 IV-61-62 (Test Cross Reference P3-24); New York Commission Comments at 91-92.

[985] Department of Justice Evaluation at 21. As the Department noted, customers served by unbundled local loops tend to be heavy telecommunications users and, therefore, also tend to be extremely profitable customers for both Bell Atlantic and competing carriers. *See* AT&T Mulligan Aff. at paras. 6-7; Department of Justice Evaluation at 21.

[986] KPMG Final Report at § IV.L.3.1, Table IV12.6, P12-4. KPMG stated that it "confirmed that BA-NY as stated taken actions [sic] to address [increased volumes] of LNP Hot Cut orders. Specifically, BA-NY is opening a second RCCC to handled coordinated orders within Bell Atlantic North, including New York. This new RCCC currently has a staff of 20 coordinators and an ultimate staffing goal of 128 non-management personnel." *Id.* We also note, however, that we expect Bell Atlantic to expand its manual hot cut capacity further as it experiences increases in demand.

[987] AT&T Comments at 37; AT&T Mulligan Aff. at para. 38; Department of Justice Evaluation at 21.

[988] *See also supra* Section V.B.1.f.(ii).(a).

time hot cut performance at rates at or above 90 percent, in combination with the evidence indicating that fewer than five percent of hot cuts resulted in service outages and that fewer than two percent of hot cut lines had reported installation troubles, to be sufficient to establish compliance with the competitive checklist, we view this as a minimally acceptable showing. We would thus have serious concerns if the level of performance in any one of these three measures were to decline and would be prepared, in that event, to take whatever enforcement action is warranted.[989] We are especially concerned with hot cut performance because of the substantial risk that an untimely or defective cutover will result in an end-user customer's loss of service for more than a brief period, as well as the effect of such disruptions upon competitors. We also would be particularly concerned if there were any evidence that Bell Atlantic is competing in the marketplace in part by suggesting to consumers that there is a possibility of service disruptions when customers switch their service from Bell Atlantic to competing carriers.

c. Maintenance and Repair of Unbundled Local Loops

310. We further conclude that Bell Atlantic demonstrates that it is providing maintenance and repair functions for unbundled local loops in substantially the same time and manner in which it provides those functions to its retail customers. Although Bell Atlantic does not perform some loop maintenance and repair functions for competitors as quickly as it performs them for Bell Atlantic retail customers, we do not consider these slight differences to be competitively significant. Rather, we find that Bell Atlantic provides nondiscriminatory maintenance and repair services for the unbundled loops it provides to competing carriers.

311. The New York Carrier-to-Carrier performance data demonstrate that Bell Atlantic performs maintenance and repair functions with respect to loops provisioned to competitors in substantially the same time and manner as it does with respect to loops provided to its retail customers.[990] In July 1999, Bell Atlantic missed approximately 16 percent of loop repair appointments for competing carriers and 12 percent of repair appointments for its retail customers.[991] In August, Bell Atlantic missed 14 percent of loop repair appointments for competitors and 10 percent for Bell Atlantic customers.[992] Significantly, Bell Atlantic improved its performance substantially in September, missing approximately 12 percent of competitors' loop repair appointments and 11 percent of Bell Atlantic retail appointments.[993] This demonstrates that Bell Atlantic is responding to competitors' trouble complaints in substantially

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[989] *See infra* Section VII.

[990] Bell Atlantic Lacouture/Troy Decl. at para. 87.

[991] Bell Atlantic Dowell/Canny Decl. Attach. D (metric MR-3-01 – Loop for July 1999). In July, Bell Atlantic missed 16.57 percent of loop repair appointments for competitors and 12.28 appointments for its own customers. *Id.*

[992] Bell Atlantic Dowell/Canny Decl. Attach. D (metric MR-3-01 – Loop for August 1999). In August, Bell Atlantic missed 14.00 percent of loop repair appointments for competing carriers and 10.47 percent of appointments for repairs to its own customers' loops. *Id.*

[993] Bell Atlantic Dowell/Canny Decl. Attach. C, Ex. C at 6 (metric MR-3-01 – Loop for September 1999). September data demonstrate that Bell Atlantic missed 12.27 percent of repair appointments for competitors and 11.23 percent of appointments for its own customers. *Id.*

the same manner as it responds to its own customers' complaints.

312. Additional data indicate that the average time to repair loops provisioned to competing carriers is comparable to the average time to repair loops provisioned to Bell Atlantic customers. In July, for instance, data demonstrate that repairs were made to loops provisioned to competitors in, on average, 28 hours and to loops provisioned to retail customers in, on average, 29 hours.[994] Similarly, in August, repairs were made in an average of 26 hours for competitors and 25 hours for Bell Atlantic customers[995] and in September, in 25 hours for competitors and 27 hours for Bell Atlantic customers.[996]

313. We conclude that this level of performance demonstrates that Bell Atlantic is providing loop maintenance and repair functions in a nondiscriminatory manner. We do not consider the slight differences between the percentage of missed repair appointments to be indicative of discriminatory access to these functions, particularly in view of the improvements made by Bell Atlantic in September. Furthermore, data addressing the duration of loop maintenance and repair activities demonstrate that Bell Atlantic is repairing competitors' loop troubles in substantially the same time period as it is repairing its own customers' loops. We consider this to be persuasive evidence of nondiscriminatory access to loop maintenance and repair functions.

314. Furthermore, KPMG verified Bell Atlantic's performance in this regard through an extensive test of maintenance and repair services offered to both competing carriers and retail customers, as well as Bell Atlantic's ability to scale its maintenance and repair capabilities to meet future volumes and increased demand.[997] Finally, Bell Atlantic demonstrates that it has addressed and resolved the situations in which it was not meeting performance standards governing maintenance and repair of unbundled loops.[998]

315. Moreover, we do not find the concerns raised by commenters to be sufficient to overcome Bell Atlantic's evidence that it performs loop maintenance and repair functions in a nondiscriminatory manner. The few commenters that raise objections to Bell Atlantic's loop maintenance and repair performance do not raise specific allegations supported by documented facts. Rather, competing carriers claim generally that Bell Atlantic's performance of loop

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[994] Bell Atlantic Dowell/Canny Decl. Attach. D (metric MR-4-02 – Loop Trouble for July 1999). In July, loop repairs were completed in, on average, 28.33 hours for competitors and 29.60 hours for Bell Atlantic customers. *Id*

[995] Bell Atlantic Dowell/Canny Decl. Attach. D (metric MR-4-02 – Loop Trouble for August 1999). Specifically, in August, loop repairs were completed in, on average, 26.22 hours for competitors and 25.32 hours for Bell Atlantic customers. *Id.*

[996] Bell Atlantic Dowell/Canny Reply Decl. Attach. C at 6 (metric MR-4-02 – Loop Trouble for August 1999). In September, loop repairs were completed in, on average, 25.08 hours for competitors and 27.12 hours for Bell Atlantic customers. *Id.*

[997] KPMG Final Report at M&R1 V-13-23 (RETAS functional and parity evaluation) & M&R5 V-75-77 (parity evaluation).

[998] Bell Atlantic Lacouture/Troy Decl. at para. 89.

maintenance and repair functions are discriminatory.[999] Accordingly, we find these allegations insufficient to rebut Bell Atlantic's showing that it provides access to loop maintenance and repair functions in a nondiscriminatory manner.

d. xDSL-Capable Loops

316. Based upon its overall performance in providing unbundled access to local loops, we conclude that Bell Atlantic satisfies its obligations under item 4 of the competitive checklist. We note at the outset that our previous section 271 orders have not addressed the ordering or provisioning of xDSL-capable loops[1000] and that no previous applicant has made a separate showing on the provision of xDSL loops. Thus, although the obligation to provide access to unbundled loops capable of supporting xDSL technologies was adopted in 1996,[1001] we have not previously provided guidance to the BOCs as to the type and level of proof necessary in this area to establish compliance with section 271.

317. States are just now developing and adopting performance standards and measures for xDSL loop ordering and provisioning, and incumbent and competitive carriers themselves are in the process of defining the relevant criteria for adequate xDSL performance and developing operational provisioning procedures. The New York Commission did not begin to address xDSL-specific issues until August 1999. In response to early concerns raised by competing carriers in the New York section 271 proceeding regarding the timeliness and quality of Bell Atlantic's provisioning of xDSL loops, the New York Commission in August initiated a collaborative proceeding to address the issues raised by competitors.[1002] The collaborative proceeding is intended to focus on defining provisioning methods for xDSL loops to ensure the timely installation of functioning loops. In addition to conducting its xDSL collaborative proceeding, the New York Commission, in conjunction with Bell Atlantic and several competing carriers, is in the process of developing xDSL-specific performance standards and measures. The New York Commission expects to receive recommendations for xDSL-specific measures in December, in which case Bell Atlantic should begin officially reporting its performance to the New York Commission and competing carriers in January 2000.[1003]

318. Parties are thus actively working in New York to address issues associated with

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[999] Omnipoint Comments at 11; Prism Comments at 13.

[1000] With xDSL technology, two modems are attached to the local loop: one at the subscriber's premises and one at the telephone company's central office. The use of xDSL modems allows transmission of data over the copper loops at vastly higher speeds than can be achieved with analog data transmission. An ordinary voice channel in the United States, for instance, generally allows transmission of digital information at the rate of up to 56,000 bits per second. By contrast, xDSL services permits data to be transmitted to the end user at up to several million bits per second, depending upon loop length, loop design, and the technology deployed. *Advanced Services Order and NPRM*, 13 FCC Rcd at 24026-27.

[1001] *Local Competition First Report and Order*, 11 FCC Rcd at 15691.

[1002] New York Commission Comments at 92-93.

[1003] *Id.* at 94-95.

xDSL loops, and have already undertaken a number of process improvements. The New York xDSL collaborative is designed to improve communication among carriers and to develop agreed-upon common practices for xDSL loop provisioning.[1004] The New York Commission, for instance, instituted a process change to simplify xDSL central office cross-connections and is working to remedy customer contact problems that have led to a significant portion of installations in which Bell Atlantic cannot access the customers' premises.[1005] The collaborative proceeding is also addressing problems relating to the timing of loop installations by ensuring that carriers engage in close operational coordination so that loop installations are accurate and less likely to be the subject of trouble reports.[1006]

319. In addition, through the New York collaborative, Bell Atlantic and competing carriers have agreed to joint testing and provisioning procedures for xDSL loops. Provisioning xDSL loops to competitors involves processes that are more complex than those involved with the provision of a voice-grade loop.[1007] As a result, participants in the New York collaborative proceeding have agreed to a provisioning process for xDSL loops that involves collaborative testing between Bell Atlantic and the requesting carrier. The process, which has been in place since September 15, 1999, involves individual and joint testing of loops, sharing of test results, joint review of order status, and procedures for establishing a dialogue between Bell Atlantic and the requesting carrier on orders in jeopardy.[1008] These procedures ensure, for instance, that the parties test loops during the installation process and that competitors receive demarcation information at the time of installation.[1009] The New York Commission confirms that, where cooperative testing is conducted, xDSL loop installation problems are reduced.[1010] We are highly supportive of these initiatives and fully expect that the New York Commission will provide needed clarity in this area, both in terms of defining operational procedures and adopting performance standards.

320. In New York, competitors have been ordering xDSL-capable loops for a relatively limited period of time. According to Bell Atlantic, it provisioned 7 xDSL-specific loops in June, 56 xDSL-specific loops in July, 449 xDSL-specific loops in August, and 653 xDSL-specific loops in September.[1011] In addition, Bell Atlantic indicates that it provisioned more than 3,300 premium digital loops since January 1999, although not all of those loops have been used by

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1004 New York Commission Reply at 34.

1005 *Id.*

1006 *Id.*

1007 *Id.* at 31-32.

1008 New York Commission Comments at 94.

1009 *Id.* at 94; Bell Atlantic Lacouture/Troy Reply Decl. at para 97.

1010 New York Commission Comments at 94; New York Commission Reply at 35.

1011 Bell Atlantic Lacouture/Troy Decl. at para. 81; Department of Justice Ex. 8 at 2.

competitors to provide xDSL services.[1012] Covad indicates that it submitted more than 2,300 orders for xDSL-capable loops in New York during the period from June through September 1999.[1013] Indeed, regardless of the data on which we rely, the record indicates that demand for xDSL-capable loops has grown dramatically in recent months.

321. Moreover, the xDSL-capable loops provisioned to competing carriers by Bell Atlantic to date represent only a small fraction of the entirety of unbundled loops provisioned in New York. Specifically, through September 1999, Bell Atlantic provisioned more than 50,000 unbundled, voice-grade loops in New York, compared to only 1,100 xDSL-specific loops.[1014]

322. This application presents unique factual circumstances with regard to xDSL loops in New York. Specifically, competitors have been ordering xDSL-capable loops in New York for a relatively short period of time; there has been a recent surge in demand; and xDSL-capable loops remain a small percentage of overall loop orders. Given these circumstances it is difficult to reach conclusive judgments about Bell Atlantic's provisioning performance for xDSL loops. We believe we could benefit from New York's input with regard to xDSL-capable loop provisioning but note that its review is still underway. In the absence of definitive state standards, we could look at Bell Atlantic's performance by examining whether the loops are delivered in a timely fashion and whether those loops actually are working.

323. In its application, Bell Atlantic submitted performance data that it asserts demonstrate that it provisions quality premium digital loops and xDSL-specific loops in a timely manner. Opponents of the application, however, heavily contest much of that data. The data submitted by Bell Atlantic indicate, for instance, that it missed between .70 percent and 4.60 percent of installation appointments for premium digital loops provisioned to competing carriers between January and September 1999.[1015] Bell Atlantic's data further indicate that it missed approximately 7 percent of xDSL-specific loop installation appointments for competitors in August 1999[1016] and approximately 3 percent of xDSL-specific loop appointments in September 1999.[1017] By contrast, competitors contend that Bell Atlantic misses far more installation

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[1012] Bell Atlantic Lacouture/Troy Decl. at paras. 77-78; Department of Justice Ex. 8 at 2. Bell Atlantic provides two types of loops over which competitors may provide advanced services: premium digital loops and loops that are specifically intended for use in the provision of xDSL services. Bell Atlantic Lacouture/Troy Decl. at paras. 77, 80. Premium digital loops are used for the provision of Bell Atlantic's retail ISDN services and, on occasion, can be utilized for the provision of xDSL services. We are unable to determine from the record what portion of Bell Atlantic's premium digital loops has been used by competitors for the provision of advanced services.

[1013] Covad Cutcher/McChesney/Clancy Decl. at para. 37.

[1014] Bell Atlantic Lacouture/Troy Decl. at paras. 66, 81; Bell Atlantic Lacouture/Troy Reply Decl. at para. 34; Department of Justice Ex. 8 at 2.

[1015] Bell Atlantic missed 4.60 percent of digital loop installation appointments in January 1999, and then demonstrated significantly improved performance through July 1999. See Bell Atlantic Lacouture/Troy Decl. at para. 79 & Attach. J. In August 1999, Bell Atlantic again missed 4.00 percent of installation appointments for premium digital loops provisioned to competing carriers. *Id.*

[1016] Bell Atlantic Lacouture/Troy Reply Decl. Attach. F.

[1017] *Id.*

appointments. Covad, for instance, submits data indicating that between May and August, 1999, it received premium digital and xDSL-capable loops by the due date to which Bell Atlantic committed for only 29 percent of the loops it ordered.[1018]

324. Bell Atlantic also asserts that in August and September 1999, it provisioned xDSL loops in approximately 7 days, on average.[1019] Covad asserts that in its experience, the average interval for Bell Atlantic's installation of these loops has been approximately 40 days.[1020] Other competing advanced services providers argue that Bell Atlantic's performance data should be disregarded because the installation interval measure does not consider whether the loop installed by Bell Atlantic is functioning.[1021]

325. There are also sharp disparities in the record regarding the quality of Bell Atlantic's xDSL loop provisioning. Bell Atlantic reports, for instance, that during the first month since the September 15, 1999 implementation of joint installation and testing procedures, it received trouble reports on approximately three percent of the xDSL loops it installed.[1022] By contrast, Covad contends that only 39 percent of the loops it received in the first two weeks of the joint procedures were installed correctly.[1023] Similarly, NorthPoint argues that a substantial number of the xDSL loops provisioned by Bell Atlantic are defective or impaired.[1024]

326. The absence of a New York performance benchmark or Commission reconciliation of conflicting data claims makes it difficult for this Commission to decide between the competing statistics. A number of factors complicate our efforts to analyze the data. The record indicates, for instance, that Covad begins measuring its installation intervals on the date that it first sends an order for an xDSL loop to Bell Atlantic, whereas Bell Atlantic does not begin measuring the installation interval until it receives an error-free order from the requesting carrier.[1025] According to Bell Atlantic, twenty-five percent of Covad's orders have had two or more corrections associated with them,[1026] a result that could cause large disparities in installation intervals based solely upon the conflicting measurement techniques.[1027] With respect to the

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[1018] Covad Conley/Poulicakos Decl. at para. 28.

[1019] Bell Atlantic Lacouture/Troy Decl. Attach. K; Bell Atlantic Lacouture/Troy Reply Decl. Attach. F.

[1020] Covad Conley/Poulicakos Decl. at para. 28.

[1021] NorthPoint Comments at 18-19; NAS Comments at 8.

[1022] Bell Atlantic Lacouture/Troy Reply Decl. at para. 82. Specifically, Bell Atlantic states that it received 21 repair orders on the 824 xDSL loops it installed between September 15 and October 15, 1999. *Id.*

[1023] Covad Cutcher/McChesney/Clancy Decl. at para. 62.

[1024] NorthPoint Comments at 18.

[1025] Bell Atlantic Lacouture/Troy Reply Decl. at para. 85.

[1026] *Id.*

[1027] This is similarly the case with respect to the timely return of Firm Order Commitments (FOCs). Although Covad claims that from June through August 1999, Bell Atlantic was, on average, two days late in providing it with FOCs for xDSL orders, Covad begins measuring the FOC interval the first time it submits an order, whereas Bell

missed appointment data, Bell Atlantic contends, and competing carriers do not seriously dispute, that in many instances it is unable to gain access to the customers' premises to complete the installation and that many orders are cancelled by the customer when Bell Atlantic arrives to complete the installation.[1028] In such circumstances, Bell Atlantic does not score the appointment as having been missed, although it appears that at least some competing carriers do. We do not believe it appropriate to include legitimate "no access" situations in a measure of missed appointments.

327. We thus are faced with a situation in which competitors have been ordering xDSL-capable loops in New York for a relatively short period of time; there has been a recent surge in demand; and xDSL-capable loops remain a small percentage of loop orders. Although the ongoing New York proceeding is expected to resolve many key issues in the near future, the underlying performance data in this record are not reported in accordance with a common set of definitions and have not been validated by the New York Commission. Moreover, we have never before provided direction to the BOCs regarding the application of section 271 to the provision of xDSL loops. In light of these unique circumstances, we conclude that we should rely upon Bell Atlantic's overall showing of loop performance in evaluating whether Bell Atlantic has met its burden of demonstrating that it provides unbundled local loops in accordance with checklist item 4.

328. In reaching this conclusion, we take a different approach than the Department of Justice, which found that it could not conclude on the current record that Bell Atlantic demonstrates an acceptable level of performance in provisioning xDSL loops.[1029] Like this Commission, the Department had difficulty evaluating the evidence presented by Bell Atlantic in light of the contrary data submitted by competing carriers. The Department, however, concluded that the Commission should await completion of the New York Commission's ongoing xDSL collaborative proceeding and review Bell Atlantic's provisioning performance at that time.[1030] We have given substantial weight to the Department of Justice's views, but nonetheless, based upon our review of the record on loops as a whole, find that Bell Atlantic establishes that it provisions unbundled local loops at a level of performance sufficient for checklist compliance.

329. As detailed above, we conclude that Bell Atlantic's overall performance in providing access to unbundled local loops is sufficient to satisfy the competitive checklist. Bell Atlantic establishes that it meets the vast majority of installation appointments for standard and high-capacity voice grade loops and, in fact, misses fewer new loop installation appointments for competing carriers than it does for its retail customers. In addition, Bell Atlantic demonstrates that the loops it installs are of substantially the same quality as the loops it provides to its retail

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Atlantic calculates the interval from the time it receives an error-free order. See Covad Cutcher/McChesney/Clancy Decl. at para. 34. We believe that it would be appropriate to measure FOC intervals from the time a valid order is placed.

[1028] Bell Atlantic Lacouture/Troy Reply Decl. at para. 86.

[1029] Department of Justice Evaluation at 27-28.

[1030] *Id.* at 28.

customers. Similarly, Bell Atlantic demonstrates that it provides coordinated cutovers of loops, *i.e.*, hot cuts, to competing carriers within the prescribed time interval at least 90 percent of the time and that in no more than five percent of cases did the hot cut result in a service disruption. Finally, Bell Atlantic establishes that it provides loop maintenance and repair functions to competitors in substantially the same time and manner as it provides them to its retail customers.[1031] If xDSL services continue to grow rapidly, however, the aggregate loop results will be more heavily influenced by Bell Atlantic's performance in provisioning xDSL-specific loops. If the future aggregate performance declines from current levels, we will take appropriate enforcement action.

330. We choose to look at Bell Atlantic's overall performance due to the unique circumstances present in this application. Given our expectation that the unique circumstances present in this case will evolve over time or will otherwise not be present in future applications, we do not expect to rely solely on a BOC's overall loop performance in reaching a decision on this checklist item in future applications.[1032] Rather, we will find it most persuasive if future applicants under section 271, unlike this applicant, make a separate and comprehensive evidentiary showing with respect to the provision of xDSL-capable loops, either through proof of a fully operational separate advanced services affiliate as described below, which may also include appropriate performance measures, or through a showing of nondiscrimination in accordance with the guidance provided herein. Given our statutory obligation to encourage deployment of advanced services[1033] and the critical importance of the provisioning of xDSL loops to the development of the advanced service marketplace, we emphasize our intention to examine this issue closely in the future.

331. We believe that the creation of a separate affiliate for the provision of retail services may provide significant evidence that a BOC complies with the nondiscrimination requirements of the competitive checklist.[1034] A separate affiliate may be particularly appropriate for new offerings where it is difficult to demonstrate nondiscrimination through statistical evidence.[1035] In this case, we have further assurance that competing carriers in New York will have nondiscriminatory access to xDSL-capable loops in the future as a result of Bell Atlantic's commitment to establish a separate affiliate through which it will offer retail advanced

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[1031] *See supra* paras. 283, 284, 291-302.

[1032] Future applicants, for instance, may have the benefit of clearly-defined performance standards and verified performance data with respect to xDSL-capable loop provisioning. In addition, future applicants will have a clear picture of the evidentiary showing we would expect for a showing of checklist compliance with respect to xDSL-capable loops.

[1033] The principal section of the 1996 Act concerning advanced telecommunications services is Section 706, Pub. L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157.

[1034] Pursuant to the *Local Competition First Report and Order*, a BOC must offer access to loops capable of transmitting the digital signals necessary to provide the full range of xDSL-based services. *Local Competition First Report and Order*, 11 FCC Rcd at 15692-93.

[1035] Separate affiliates can also be utilized to demonstrate checklist compliance for conventional services.

services.[1036]

332. Providing advanced services through a separate affiliate would reduce the ability of a BOC to discriminate against competing carriers with respect to xDSL services. Significantly, under this structure, the BOC would be required to treat rival providers of advanced services the same way that it treats its own separate affiliate. Because the BOC's advanced services affiliate would use the same processes as competitors to conduct such activities as ordering loops, and pay an equivalent price for facilities and services, the creation of the affiliate should ensure a level playing field between the BOC and its advanced services competitors.[1037] We also believe that this structure would have the additional benefit of increasing the availability of and broadening the choices for advanced services for all Americans. A separate advanced services affiliate helps to attain the goal of encouraging entry into the provision of advanced services by numerous firms, in addition to the BOCs, while protecting against the risk that the BOCs could cripple these services in their infancy by discriminating against competing advanced services providers.

333. In the absence of a separate affiliate, a BOC seeking approval under section 271 in the future could demonstrate that it provides nondiscriminatory access to xDSL loops in accordance with checklist item four by establishing by a preponderance of the evidence that it provides xDSL-capable loops to competitors in a nondiscriminatory manner. If an applicant chose to make its case by submitting performance data, we would examine carefully the performance standards adopted by the relevant state commission.

334. In this regard, we emphasize our strong preference for a record that contains data measuring a BOC's performance pursuant to state-adopted standards that were developed with input from the relevant carriers and that include clearly-defined guidelines and methodology. The need for unambiguous performance standards and measures has been reinforced by the disputes in this record regarding, for instance, what performance is being measured and whether it is properly captured by particular measures. Accordingly, we encourage state commissions to

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[1036] Specifically, Bell Atlantic on December 10, 1999 committed to establish a separate advanced services affiliate that will be distinct from its local exchange company and will operate largely in accordance with the structural, transactional, and nondiscrimination requirements of sections 272. *See* Letter from Thomas J. Tauke, Senior Vice President – Government Relations, Bell Atlantic, to The Honorable William E. Kennard, CC Docket No. 99-295, Attach. 1 at 1-2 (filed December 10, 1999). Under Bell Atlantic's commitment to establish this affiliate, which conforms to the conditions to our approval of the SBC/Ameritech merger, Bell Atlantic will transfer to the separate affiliate specified advanced services equipment on an exclusive basis during a limited grace period, to end on July 1, 2000. After February 1, 2000, all new advanced services equipment will be purchased and owned by the separate affiliate. After July 1, 2000, the responsibility of providing retail advanced services would rest with the separate affiliate. The particular activities in which the separate affiliate and the incumbent LEC may engage are set forth in the SBC/Ameritech merger conditions. *See In re Ameritech Corp. and SBC Communications Inc. For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14859-67, 14969-99 (1999).

[1037] We view it as critical that a BOC provide all forms of advanced services through a separate affiliate, and not just ADSL, so the affiliate would need to obtain stand-alone loops from the BOC in order to provide all varieties of advanced services.

adopt specific xDSL loop performance standards measuring, for instance, the average completion interval, the percent of installation appointments missed as a result of the BOC's provisioning error, the timeliness of order processing, the installation quality of xDSL loops provisioned, and the timeliness and quality of the BOC's xDSL maintenance and repair functions. We believe information on these dimensions of performance is critical to ensuring our joint federal and state commitment to the development of a vibrant advanced services marketplace. We also urge states to consider adoption of self-enforcing mechanisms to ensure compliance with any state-adopted standards.

335. Specifically, depending upon whether there is an appropriate retail analogue, we would expect a BOC to demonstrate, preferably through the use of state or third-party verified performance data, that it provides xDSL-capable loops to competitors either in substantially the same average interval in which it provides xDSL service to its retail customers or in an interval that offers competing carriers a meaningful opportunity to compete.[1038] The BOC would also be expected to establish, again through defined performance measures, that it meets substantially the same number of installation appointments for the customers of competing carriers that it meets for its retail customers or that the level of missed appointments is sufficiently low to offer competitors a meaningful opportunity to compete. Additionally, we would expect a showing that the quality of the loops provisioned to competing carriers is substantially the same as the quality of the lines used for the BOC's provision of retail advanced services or that the level of quality is sufficiently high to permit competitors to compete meaningfully. We would also look for evidence establishing that the BOC performs maintenance and repair functions for competitors' xDSL loops in substantially the same time and manner as it does for its retail lines. Finally, we would expect the BOC to demonstrate that it provides competing carriers with nondiscriminatory access to the pre-ordering and ordering OSS functions associated with the provision of xDSL loops, including access to loop qualification information and databases. In this regard, the BOC could make such a showing through evidence of either extensive commercial experience or third-party testing.

336. In conclusion, we reiterate that we do not expect the special circumstances that are present in this application to exist in future applications. Competitors are increasingly ordering xDSL loops, and, as the states begin to develop performance standards in this area, there will be a framework for future examination of performance data. Most importantly, in setting forth our views on the two avenues of proof that we would find persuasive in future applications, we have now provided direction to the BOCs regarding their obligation to provide xDSL-capable loops in accordance with the requirements of the competitive checklist.

[1038] As discussed *supra* in Section III, where a retail analogue exists, a BOC must provide access to competing carriers in "substantially the same time and manner" as it provides access to itself. *Ameritech Michigan Order*, 12 FCC Rcd at 20118-19. If there is no appropriate retail analogue, the BOC must demonstrate that the access it provides to competing carriers would afford an efficient carrier a "meaningful opportunity to compete." *Id.*

E. Checklist Item 5 -- Unbundled Local Transport

1. Background

337. Section 271(d)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[1039] The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.[1040] Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.[1041] Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.[1042]

2. Discussion

338. Based on the evidence in the record, we conclude that Bell Atlantic provides both shared and dedicated transport in compliance with the requirements of this checklist item.[1043] The New York Commission also finds that Bell Atlantic is in compliance with this checklist item.[1044]

[1039] 47 U.S.C. § 271(c)(2)(B)(v).

[1040] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719.

[1041] *Id.* A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs), SWCs and interexchange carriers points of presence (POPs), tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels (*e.g.*, OC-3/12/48/96) that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719.

[1042] *Id.* at 20719 n.650. The Commission also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20762, n.652.

[1043] Bell Atlantic Lacouture /Troy Decl. at para. 106; NY PSC 916 Tariff § 5.3 (Appendix H, Tab 3 of Bell Atlantic's 271 Application).

[1044] New York Commission Comments at 100-04. *See also* Intermedia Comments at 8-9.

339. Bell Atlantic's August and September 1999 data concerning missed appointments for interoffice facilities show that its provisioning of transport to competitive LECs is nondiscriminatory.[1045] Moreover, none of the commenting parties challenge Bell Atlantic's showing concerning the provision of shared transport, except insofar as the commenters address OSS issues and matters concerning the provisioning of the UNE platform, which we address elsewhere.[1046]

340. We are not persuaded by the assertions of some commenters that Bell Atlantic fails to provide dedicated local transport in a timely manner.[1047] Bell Atlantic states that, with the exception of Choice One discussed below, these commenters have not ordered unbundled local transport from Bell Atlantic, but rather have requested special access services from Bell Atlantic's interexchange access tariffs.[1048] We cannot accept the assertion by a number of these parties that the provision of special access should be considered for purposes of determining checklist compliance in this proceeding.[1049] Although dedicated local transport and the interoffice portion of special access are generally provided over the same facilities, they differ in certain other respects.[1050] A number of these parties, however, assert that the checklist requirements focus on the provision of physical facilities, not the regulatory classifications that apply. We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some of the same physical facilities as a checklist item. We have never considered the provision of interstate access services in the

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[1045] Bell Atlantic's August 1999 data shows a missed appointment rate of 12.03 percent for interoffice facilities provided to competitive LECs and a missed appointment rate of 18.03 percent for Bell Atlantic retail special services. Bell Atlantic Dowell/Canny Decl. Attach. G at 15 (metric PR-4-01). In September 1999, Bell Atlantic had a missed appointment rate of 18.75 percent for interoffice facilities provided to competitive LECs and a missed appointment rate of 18.58 percent for Bell Atlantic retail special services. Bell Atlantic Comments Dowell/Canny Reply Decl. Attach. C at 10. The New York Commission uses a retail analogue to measure parity New York Commission Comments at 103.

[1046] *See supra* Section V.B.

[1047] *See* Allegiance Comments at 12; Choice One Comments at 9; Focal Comments at 3-6; OmniPoint Comments at 7-8,12-13; Teligent Comments at 16.

[1048] Bell Atlantic Lacouture/Troy Reply Decl. at para. 114.

[1049] *See, e.g.*, Letter from Jonathan Askin, Vice President – Law, The Association for Local Telecommunications Services, Carol Ann Bischoff, Executive Vice President and General Counsel, Competitive Telecommunications Association, James Falvey, Vice President, Regulatory Affairs, e.spire Communications, Inc., Richard J. Metzger, Vice President, Regulatory and Public Policy, Focal Communications Corporation, Douglas G. Bonner, Arent Fox Kintner Plotkin & Kahn, PLLC, Counsel to Omnipoint Communications, Inc., and David S. Turetsky, Senior Vice President, Law and Regulatory, Teligent, Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 99-295 (filed December 16, 1999) (ALTS Dec. 16 *Ex Parte* Letter).

[1050] For example, local transport is provided between BOC and/or competitive LEC wire centers or switches while in the case of special access at least one end of the transmission facility is located at a customer premise. Letter from Dee May, Director, Regulatory Affairs, Bell Atlantic to Claudia Pabo, Common Carrier Bureau, FCC, CC Docket No. 99-295 (filed Nov. 19, 1999). These parties do not challenge the assertion that special access is a service offering while unbundled transport is not, although they argue that this should not remove it from consideration in the context of checklist compliance.

context of checklist compliance before.[1051] The fact that competitive LECs can use interstate special access service in lieu of the EEL, a combination of unbundled loops and transport, and can convert special access service to EELs does not persuade us that we should alter our approach and consider the provision of special access for purposes of checklist compliance.[1052] This is especially true when Bell Atlantic is not required to demonstrate that it provides EELs for purposes of checklist compliance in this application because the application was filed before the effective date of the *UNE Remand Order* clearly establishing Bell Atlantic's federal obligation to provide EELs.[1053]

341. Nevertheless, to the extent that parties are experiencing delays in the provisioning of special access services ordered from Bell Atlantic's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 complaint process.

342. In addition, we find that Bell Atlantic satisfactorily responds to Choice One's complaint that Bell Atlantic's provisioning interval for unbundled local transport reflects unacceptable delays. According to Bell Atlantic, Choice One failed to follow the recommended procedures and ordered entrance facilities after it ordered collocation.[1054] Bell Atlantic asserts that if Choice One had followed repeatedly suggested procedures and ordered collocation and entrance facilities simultaneously, both would have been ready at the same time.[1055] Based on the present record, this appears to be an isolated problem for which Bell Atlantic should not be held responsible.[1056]

F. Checklist Item 6 – Unbundled Local Switching

1. Background

343. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."[1057] In the *Second BellSouth Louisiana Order,* the Commission required BellSouth to provide unbundled local

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[1051] We note that a number of checklist items in addition to unbundled transport have interstate access tariff analogs, including the local loop and local switching.

[1052] Our reasoning here applies equally to the consideration of the local loop component of special access in the context of the unbundled local loop checklist requirement. For the reasons addressed in this section, we also conclude that there is no need to consider the provision of special access in the context of the public interest requirement.

[1053] See, *supra*, Section V.B.2. The fact that Bell Atlantic provides EELs pursuant to state requirements is not dispositive of section 271 checklist obligations.

[1054] Bell Atlantic Lacouture/Troy Reply Decl. at para. 115.

[1055] *Id.*

[1056] In reaching this conclusion, we note that Choice One is the only competitive LEC which reports experiencing this problem with the provisioning of dedicated transport in this proceeding.

[1057] 47 U.S.C. § 271(c)(2)(B)(vi); *see also Second BellSouth Louisiana Order,* 13 FCC Rcd at 20722.

switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.[1058] The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.[1059] Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.[1060]

344. Moreover, in the *Second BellSouth Louisiana Order,* the Commission required BellSouth to permit competing carriers to purchase unbundled network elements, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.[1061] The Commission also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.[1062] Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching.[1063] Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.[1064]

345. In the *Second BellSouth Louisiana Order*, the Commission stated that to comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality.[1065] The Commission also stated that a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch.[1066]

2. Discussion

346. Based on the evidence in the record, we conclude that Bell Atlantic demonstrates that it complies with checklist item 6.[1067] Specifically, Bell Atlantic demonstrates that it provides:

[1058] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722-24.

[1059] *Id.* at 20722.

[1060] *Id.* at 20722-23.

[1061] *Id.* at 20723, 20733-34.

[1062] *Id.* at 20723 (citing the *Ameritech Michigan Order,* 12 FCC Rcd at 20619, 20717-18).

[1063] *Id.* at 20723.

[1064] *Id.* at 20723.

[1065] *Id.* at 20723 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705).

[1066] *Id.* at 20723 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20714-15).

[1067] Bell Atlantic provides unbundled local switching under its tariffs and approved interconnection agreements. Bell Atlantic Application at 22, n.25; Bell Atlantic Lacouture/Troy Decl. at para. 90. *See also* Bell Atlantic Application at 23 (citing KPMG Report); Bell Atlantic Lacouture/Troy Decl. at paras. 90, 91, 95, 105; Letter from

(1) line-side and trunk side facilities;[1068] (2) basic switching functions;[1069] (3) vertical features;[1070] (4) customized routing;[1071] (5) shared trunk ports;[1072] (6) unbundled tandem switching;[1073] (7) usage information for billing exchange access,[1074] and (8) usage information for billing for reciprocal compensation.[1075] The New York Commission concludes that Bell Atlantic is in compliance with this checklist item.[1076]

347. We are not persuaded by Z-Tel that Bell Atlantic fails to meet the requirements for this checklist item. Z-Tel claims that Bell Atlantic has used the Network Design Request (NDR) process to delay implementation of Z-Tel's custom dialing plans in selected New York markets.[1077] We find that this claim does not warrant a conclusion that Bell Atlantic has failed to comply with this checklist item. We recognize that Z-Tel is better able to serve its customers if it

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Joseph J. Mulieri, Director, Government Relations, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 99-295 (filed November 18, 1999).

[1068] Line-side facilities include, but are not limited to, the connection between a loop termination at a main distribution frame, and a switch line card. Trunk-side facilities include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20724 nn.679-680.

[1069] The basic switching function includes, but is not limited to: connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks, as well as the same basic capabilities that are available to the BOC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20726 n.690.

[1070] *Second BellSouth Louisiana Order* at 13 FCC Rcd at 20726. Vertical features provide end-users with various services such as custom calling, call waiting, call forwarding, caller ID and Centrex. *Id.* at 20726.

[1071] An incumbent LEC must provide customized routing as part of the local switching element, unless it can prove to the state commission that customized routing in a particular switch is not technically feasible. *Second BellSouth Louisiana Order* at 13 FCC Rcd at 20728 n. 705. Customized routing permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent, which will carry certain classes of traffic originating from requesting carriers' customers. *See id.* at 20728-29. Customized routing is also referred to as selective routing. *Id.* at 20728 n.704.

[1072] *Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12475-79; *Ameritech Michigan Order*, 12 FCC Rcd at 20716-17; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20732.

[1073] The requirement to provide unbundled tandem switching includes: (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card; (ii) the base switching function of connecting trunks to trunks; and, (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20733 n.732.

[1074] *See id.* at 20733-35.

[1075] *See id.* at 20735-37.

[1076] New York Commission Comments at 110. *See also* ALTS Comments at 14-15; Intermedia Comments at 9.

[1077] Z-Tel Comments at 10-13.

is able to obtain a consistent level of service from Bell Atlantic statewide. We note, however, that the time frames for delivery of custom dialing plans are subject to negotiation between Bell Atlantic and competitive LECs under the terms of Bell Atlantic's interconnection agreements, and Z-Tel has not shown that Bell Atlantic's explanation for offering longer implementation time frames due to year 2000 system concerns is unreasonable.[1078] Moreover, Bell Atlantic states that, in the interim, it has offered, and Z-Tel is now pursuing, an option of obtaining a generic NDR instead of a customized NDR, until a conversion to a customized NDR can take place.[1079] Insofar as the commenters raise OSS issues and matters concerning the provisioning of the UNE platform, the primary vehicle used by competitive LECs to obtain unbundled local switching,[1080] we address these issues elsewhere.[1081]

348. We note that Z-Tel filed an *ex parte* letter on November 2, 1999, alleging that, after the comment date, Bell Atlantic ceased providing a vertical feature of the switch -- pre-programming speed dial capability.[1082] Bell Atlantic, in response, claims that this feature is designed to be initiated and controlled by the end user and, as such, it is not a feature that Bell Atlantic provides to its own retail users or to competing carriers.[1083] We find that, in view of the compelling evidence in the record that Bell Atlantic complies with this checklist item, Z-Tel's claim does not present a sufficient basis upon which to find that Bell Atlantic has fallen out of compliance in the course of the instant proceeding. If, however, future evidence reveals this to be the case, we will take appropriate enforcement action against Bell Atlantic.

G. Checklist Item 7

1. 911 and E911 Access

a. Background

349. Section 271(c)(2)(B)(vii) of the 1996 Act requires a BOC to provide "[n]ondiscriminatory access to – (I) 911 and E911 services."[1084] In the *Ameritech Michigan Order*, the Commission found that "section 271 requires a BOC to provide competitors access to

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[1078] *See id.* at 13.

[1079] Bell Atlantic Reply at 27-28.

[1080] Bell Atlantic Lacouture/Troy Decl. at para. 91.

[1081] *See supra* Section V.B. We note that none of Bell Atlantic's metrics applies expressly to the provisioning of unbundled local switching separate from provisioning this element as part of the UNE platform.

[1082] Letter from Michael B. Hazzard, Lawler, Metzger & Milkman, LLC, Counsel to Z-Tel, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 99-295 (filed Nov. 2, 1999) (Z-Tel Nov. 2, 1999 *Ex Parte* Letter).

[1083] Letter from Dee May, Director, Federal Regulatory Affairs, Bell Atlantic, to Sanford Williams, Policy & Program Planning Division, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 99-295 at 1 (filed November 23, 1999).

[1084] 47 U.S.C. § 271(c)(2)(B)(vii).

its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity."[1085] Specifically, the Commission found that a BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."[1086] For facilities-based carriers, the BOC must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself."[1087]

b. Discussion

350. Based on the evidence submitted in the record, we conclude that Bell Atlantic demonstrates that it is providing nondiscriminatory access to 911/E911 services, and thus satisfies the requirements of checklist item (vii)(I).[1088] We note that no commenter disputes Bell Atlantic's compliance with this portion of checklist item 7, and the New York Commission concludes that Bell Atlantic is providing nondiscriminatory access to 911/E911.[1089]

2. Directory Assistance/Operator Services

a. Background

351. Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.[1090] Section 251(b)(3) of the 1996 Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing with no unreasonable dialing delays."[1091] The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*.[1092]

[1085] *Ameritech Michigan Order*, 12 FCC Rcd at 20679.

[1086] *Id.*

[1087] *Id.*

[1088] Bell Atlantic Lacouture/Troy Decl. paras 161-170. *See* KPMG Final Report at § VIIE.3.1, Table VII5.5, R5.2-1-7 (App. C, Tab 916) (verifying that Bell Atlantic's process for E911 access for competitive LECs using Bell Atlantic's switches are satisfactory); KPMG Final Report at § VII5.4, R5.1-4 (App. C, Tab 916) (verifying Bell Atlantic's ability to provide E911 functionality).

[1089] New York Commission Comments at 116. *See also* ALTS Comments at 15-16 (asserting that Bell Atlantic has provided nondiscriminatory access to 911/E911); Intermedia Comments at 9-10 (stating that in Intermedia's experience, Bell Atlantic complies with this element of checklist item 7).

[1090] 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

[1091] 47 U.S.C. § 251(b)(3).

[1092] 47 C.F.R. § 51.217; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-91, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392

352. We concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).[1093] In the *Local Competition Second Report and Order*, the Commission held that the phrase "nondiscriminatory access to directory assistance and directory listings" means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding : (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested."[1094] The Commission concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.[1095] The Commission specifically held that the phrase "nondiscriminatory access to operator services" means that ". . . a telephone service customer, regardless of the identity of his or her local telephone service provider, must be

(1996) (*Local Competition Second Report and Order*) *aff'd in part and vacated in part sub nom, People of the State of California v. FCC,* 124 F.3d 934 (8th Cir. 1997), *overruled in part, AT&T Corp. v. Iowa Utils Bd.,* 119 S. Ct. 721 (1999); *Provision of Directory Listings Information under the Telecommunications Act of 1934, as amended,* CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking (rel. Sep. 9, 1999).

[1093] While both section 251(b)(3) and 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to "directory assistance," section 251(b)(3) refers to nondiscriminatory access to "operator services" while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to "operator call completion services." 47 U.S.C. §§251(b)(3), 271(c)(2)(B)(vii)(III). The term "operator call completion services" is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term "operator services" was defined as meaning "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." *Local Competition Second Report and Order,* 11 FCC Rcd at 19448. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of "operator services," because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, we concluded in the *Second BellSouth Louisiana Order* that for checklist compliance purposes "operator call completion services" is a subset of or equivalent to "operator services." *Second BellSouth Louisiana Order,* 13 FCC Rcd 20740 n.763. As a result, we use the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is provided.

[1094] 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order,* 11 FCC Rcd at 19456, 19457. The *Local Competition Second Report and Order's* interpretation of section 251(b)(3) is limited "to access to each LEC's directory assistance service." *Id.* at 19456. However, section 271(c)(2)(B)(vii) is not limited to the LEC's systems but requires "Nondiscriminatory access to . . . directory assistance to allow the other carrier's customers to obtain telephone numbers." 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the Commission's conclusion that incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible, *Local Competition First Report and Order,* 11 FCC Rcd at 15772-73, section 271(c)(2)(B)(vii)'s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer's local service provider, regardless of whether the competitor provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services. *Provision of Directory Listings Information under the Telecommunications Act of 1934, as amended,* CC Docket No. 99-273, Notice of Proposed Rulemaking (rel. Sep. 9, 1999).

[1095] *Local Competition Second Report and Order*, 11 FCC Rcd at 19464.

able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number."[1096]

353. Competing carriers may provide operator services and directory assistance by either reselling the BOC's services or by using their own personnel and facilities to provide these services. The Commission's rules require BOCs to permit competitive LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls.[1097] Competing carriers wishing to provide operator services or directory assistance using their own facilities and personnel must be able to obtain directory listings either by obtaining directory information on a "read only" or "per dip" basis from the BOC's directory assistance database, or by creating its own directory assistance database by obtaining the subscriber listing information in the BOC's database.[1098]

b. Discussion

354. Based on the evidence in the record, we conclude that Bell Atlantic demonstrates that it provides directory assistance services in accordance with the requirements of checklist item 7.[1099] The New York Commission concludes that Bell Atlantic has satisfied this checklist item.[1100]

355. We are not persuaded by commenters' arguments that Bell Atlantic fails to comply with checklist item 7. AT&T submits studies to show that Bell Atlantic's systems drop more than 10 percent of the directory listings associated with unbundled loop orders from Bell Atlantic's directory assistance database.[1101] In response, Bell Atlantic asserts that AT&T's studies are flawed and do not properly reflect improvements Bell Atlantic has made to its systems.[1102]

[1096] *Id.* at 19449, 19450

[1097] 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order,* 11 FCC Rcd at 19455, 19463. For example, when customers call the operator or calls for directory assistance, they typically hear a message such as "Thank you for using XYZ Telephone Company." Competing carriers may use the BOC's brand, request the BOC to brand the call with the competitive carrier's name or request that the BOC not brand the call at all. 47 C.F.R. § 51.217(d).

[1098] 47 C.F.R. § 51.217(c)(3)(ii); *Local Competition Second Report and Order,* 11 FCC Rcd at 19460-61.

[1099] Bell Atlantic Lacouture/Troy Decl. 172-192. *See* KPMG Final Report at § VII5.5, R5.2-1-7 (App. C, Tab 916) (concluding that Bell Atlantic's processes for Directory Assistance are satisfactory).

[1100] New York Commission Comments at 116-117. *See also* ALTS Comments at 15-16; Intermedia Comments at 9-10.

[1101] AT&T Comments at 41-44. *See also* Choice One Comments at 7-8 (citing a single customer whose directory listing was dropped from the database); Department of Justice Evaluation at 19-20 (citing AT&T's studies).

[1102] Bell Atlantic Lacouture/Troy Reply Decl. at para. 152. According to Bell Atlantic, AT&T's studies are misleading in that they address an unrepresentative subset of the total competitive LEC local service orders that are added to Bell Atlantic's directory listing database on a monthly basis. Bell Atlantic asserts that AT&T's studies do not address directory listings which are established for competitive LEC resale or UNE-Platform orders. According to Bell Atlantic, these types of orders account for nearly 80 percent of all competitive LEC orders and enjoy a 0 percent error rate. *Id.* at para. 154. Bell Atlantic further argues that "[f]ully 60 percent of the orders AT&T claimed

We find that Bell Atlantic has taken adequate measures to detect any dropped listings and restore them to the directory assistance database promptly.[1103] No other commenter raises this objection, suggesting the difficulty is of limited competitive consequence. In fact, several parties support Bell Atlantic's assertion of compliance with this checklist item.[1104] Accordingly, we conclude that these objections are not sufficient to conclude that Bell Atlantic has failed to comply with the requirements of checklist item 7.

356. In reaching this conclusion, we recognize that we differ somewhat from the Department of Justice.[1105] The Department of Justice, relying on evidence submitted by AT&T, however, did not have the benefit of Bell Atlantic's Reply, which we believe sufficiently rebuts AT&T's claims. Moreover, we note that the Department of Justice does not argue that Bell Atlantic fails to comply with checklist item 7 but rather simply cites Bell Atlantic's difficulties in this area as evidence that its hot cut performance needs improvement.

H. Checklist Item 8 – White Pages Directory Listings

1. Background

357. Section 271(c)(2)(B)(viii) of the 1996 Act requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service."[1106] Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings.[1107]

358. In the *Second BellSouth Louisiana Order,* the Commission concluded that "consistent with the Commission's interpretation of 'directory listing' as used in section 251(b)(3), the term 'white pages' in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider."[1108] We further concluded, "the term 'directory listing,' as used in this section, includes, at a minimum, the subscriber's name, address, telephone number, or any combination

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were missing were, in fact, in the database by the end of the second business day in accordance with the Carrier to Carrier Guidelines." *Id.* at para. 155.

[1103] For example, beginning in September 1999, Bell Atlantic increased the personnel dedicated to monitoring and correcting database entries. Bell Atlantic Lacouture/Troy Reply Decl. at para. 157.

[1104] *See* ALTS Comments at 15-16; Intermedia Comments at 9-10; New York Commission Comments at 116-17.

[1105] The Department of Justice stated that evidence in the record subsequent to KPMG's review of Bell Atlantic's process improvement plan "suggests that the process changes have not provided a sufficient solution" to the problem of dropped directory listings associated with provisioning of hot cuts. Department of Justice Evaluation at 19-20.

[1106] 47 U.S.C. § 271(c)(2)(B)(viii).

[1107] 47 U.S.C. § 251(b)(3).

[1108] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748.